

# FASKEN

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## VIA SERVICE

Mr. Jesse Brown  
Canadaland  
399-401 Richmond Street West  
Toronto, Ontario  
M5V 3A8

Mr. Jaren Kerr  
Canadaland  
399-401 Richmond Street West  
Toronto, Ontario  
M5V 3A8

Canadaland  
c/o Mr. Jesse Brown  
399-401 Richmond Street West  
Toronto, Ontario  
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Dear Mr. Brown and Mr. Kerr:

**Re: *WE Charity et al. v. Brown, Kerr and Canadaland***

I have reviewed the article you published at the Canadaland website ([www.canadalandshow.com](http://www.canadalandshow.com)) on October 15, 2018 entitled, "Craig Kielburger Founded WE To Fight Child Labour. Now The WE Brand Promotes Products Made By Children.", and your podcast published on the same date entitled, "The CANADALAND Investigation Of The Kielburger's [*sic*] WE Movement."

Your article and podcast both have numerous factual errors and are defamatory of WE Charity, ME to WE Social Enterprises in Canada, the ME to WE Foundation in the United States, and Craig Kielburger and Marc Kielburger personally. The false and malicious claims in your article and podcast erode the public's trust in our clients and are causing serious measurable damages to our clients. You have left them with no choice but to issue this notice of their intent to commence legal proceedings against you for defamation.

Your wrongful actions, described further in the Appendix to this letter, include the following:

- **Defamation:** You have maligned the excellent reputations of our clients with accusations that they have lied to the public regarding their commitment to ending child and slave



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labour, and that they tolerate, secretly consent to and promote the use of child labour by WE's corporate partners, when ample evidence was provided to you demonstrating the contrary. (See Appendix, Page 7, Section 1, Background and context; Page 14, Section 7, Defamatory sting in your podcast; See Appendix Page 17, Section 9, ME to WE Social Enterprises in Canada.)

- **Manufactured evidence:** To bolster your claims you presented manufactured and misleading materials which you falsely characterized as “extensive evidence”. Most egregiously, you prominently displayed in the article, and circulated on social media, a seemingly authentic image of a Kellogg's cereal box with the ME to WE logo. This mock-up was not a depiction of an authentic product. You were informed of this fact on multiple occasions prior to publication. You nevertheless maliciously used the mock-up as a ‘smoking gun’ to prove a non-existent partnership between ME to WE and Kellogg's, and thereby paint our clients as having lied in denying the existence of the partnership. (See Appendix, Page 8, Section 2, Kellogg's.)
- **Publishing knowingly incorrect financial data:** You presented financial information as factual when WE had clearly communicated to you prior to publication that it was inaccurate. For example, you claim in the podcast that WE raised “\$47 million in revenue from corporate partners alone.” You were informed prior to publication that the figure was not correct. An accurate report of revenue from WE's corporate partners would have been much smaller. Similarly, you disclosed financial information alleged to relate to one of our partners that was incorrect. That was also explained to you prior to publication. It is apparent that you chose not to share information which did not fit your intended narrative. (See Appendix, Page 12, Section 5, Factually incorrect financial information presented as “evidence”.)
- **Altering a document and using it as key “evidence” without disclosing the alteration:** Either Canadaland or your source significantly altered a confidential and internal WE Charity document. You presented this altered document to the public as “extensive evidence” against our clients. Again, the document in its original form would not have supported the narrative of your article. (See Appendix Page 13, Section 6, Altering of a document and using it as key evidence.)
- **Omitting key facts:** You maligned the reputation of our clients by publishing the false accusation that WE fails to vet its corporate partners, although you were informed in detail prior to publication of the thorough and robust procedures WE has in place to ensure that WE only works with corporations committed to building socially-responsible supply chains. You omitted numerous key facts and evidence to the contrary which again did not fit your narrative. (See Appendix, Page 10, Section 3, Unilever; Page 12, Section 4, Hershey's.)
- **Making knowingly false accusations:** You made defamatory statements about the ME to WE Foundation in the United States by falsely and recklessly stating that the ME to WE Foundation is a “private company”, which in the charitable context would constitute



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a serious impropriety and illegality. You were informed prior to publication that ME to WE Foundation in the United States is, as its name clearly indicates, a registered charitable Foundation under the USA's equivalent of Canada Revenue Agency charitable registration. Although you were presented by our clients with this clear information, both Mr. Kerr and Mr. Brown directly contradicted it in your reporting. *(See Appendix, Page 15, Section 8, ME to WE Foundation in the United States.)*

- **Reckless use of unnamed sources:** Your entire narrative and claims in relation to our clients are built upon your reckless use of unnamed sources. Even though our client repeatedly urged you to reconsider the credibility of your sources and provided clear evidence supporting this concern, you failed to adequately confirm the accuracy of information and documents provided by those sources. Your indifference to the disclosure of the origin of the documents themselves is both reckless and contrary to the *Ethics Guidelines* of The Canadian Association of Journalists. *(See Appendix, Page 20, Section 10c, Malice: Reckless and improper use of unnamed sources.)*
- **Malice through prolonged shaming:** Mr. Brown and Canadaland have maliciously prolonged your attempted shaming of our clients by keeping the article complained of posted in prominent positions on social media and Canadaland's homepage. In the three weeks since the article was first published, Mr. Brown, who describes himself in his Twitter biography as the "Shame wizard", has kept a link to the article pinned to the top of his Twitter account. *(See Appendix, Page 21, Section 10f, Malice: Prolonged attempted shaming.)*
- **Malice through intimidation and financial gain:** You are using your alleged "investigation" simply as a means to raise revenue for your platform. You have made many comments to this effect. For example, you have stated that you are using your "investigation" as a means to have Canadaland employees "get a (pay) raise" when you "reach (your) goal". Similarly, you posted your article about our clients prominently on the "Advertise with Us" section on your website to solicit advertising revenue. *(See Appendix, Page 21, Section 10g, Malice: Intimidation and financial gain.)*
- **Malice by omitting key documents and information in your "disclosure":** You published another post on your website, "All Of WE's Answers To CANADALAND (And Letters From Their Lawyers)". You share that, "in the interests of transparency, and to fully represent everything WE had to say, we are also publishing the documents they provided to us in full". However, in reality, you failed to do so. You failed to include a key document provided to you by our clients in advance of publication about a specific corporate partner because it directly contradicted your narrative. You also failed to include more than a dozen e-mail exchanges between our clients and Mr. Kerr which contained important information contradicting your assertions. Your omission of these documents and information was reckless at best. *(See Appendix, Page 20, Section 10d, Malice: Reckless omission of facts and statements.)*

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- **Malice in the use of a sensational headline which misrepresented the facts:** In your attempt to smear our clients' reputations and create undue interest in your article, you created a headline which was "click bait", used to drive click-throughs to your website. You sought to use the a sensational headline which misrepresented the facts, did not reflect our clients' side of the story, and clearly conveyed the impression that our clients are dishonest with the public. Your use of such a headline was plainly intended to prejudice readers against our clients from the outset of your article. *(See Appendix, Page 21, Section 10e, Malice: Article failing to match the claims in headline)*
- **Malice by misrepresenting our clients as litigious:** Canadaland and Mr. Brown have cited our clients' one (and only) lawsuit against a media organization, dating back over 20 years ago, to paint our clients as being "litigious". In that case our clients filed a libel suit in 1997 against *Saturday Night* magazine which was settled in their favour in February of 2000. Craig Kielburger donated the settlement proceeds to charity. Mr. Brown has failed to disclose that he worked at *Saturday Night* after the lawsuit was settled, with individuals employed there during the course of the lawsuit. Mr. Brown has also demonstrated hostility toward our clients in a September 27, 2017 podcast entitled, "It's Important To Kick These People When They're Down".
- **Recklessness and indifference:** The recklessness and indifference of your research and reporting was conveyed through Mr. Kerr's engagement with our clients and throughout the article and podcast. Mr. Kerr would not clearly present his claims to our client to fairly allow our clients an opportunity to respond to them. Throughout Mr. Kerr's engagement with our clients he displayed a secretive posture, including by responding to a request by our clients that they be advised of specific claims by simply stating that the focus of the story "is directly related to the questions I have asked WE". *(See Appendix, Page 19, Section 10b, Malice: Reckless reporting.)*

## Request for Apology and Full Retraction

The reputations of our clients – WE Charity, ME to WE Social Enterprises in Canada, the ME to WE Foundation in the United States, and Craig Kielburger and Marc Kielburger personally – is perhaps their most valuable asset. It is at the core of WE Charity's ability to raise funds to support its social mission. Craig Kielburger and Marc Kielburger remain active fundraisers for the charity. They co-founded WE as part of their commitment to end child labour and have dedicated the past 23 years of their lives to ending extreme poverty around the world. WE Charity and ME to WE have provided sustainable development to eliminate poverty for over a million people, thus addressing the root cause of child labour. Through your malicious and irresponsible reporting, you have sensationalized statements from unnamed sources, relied on manufactured evidence and omitted facts. You have published multiple false and defamatory statements in the face of clear contradictory evidence and correct statements of fact. In short, you have impugned their reputations in a malicious, reckless and irresponsible manner.



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Further to the reputational damage caused to our clients among the audience of the Canadaland website and its syndicated podcast, your defamatory statements were repeated on social media and amplified by Mr. Brown's, Mr. Kerr's and Canadaland's social media followers, including some professional journalists with large followings including prominent Canadians. Our clients have received data showing that your article and podcast, as well as corresponding social media posts from Canadaland, Mr. Brown and Mr. Kerr have been widely shared on social media channels reaching millions of followers.

Your defamatory misrepresentations and factually incorrect statements were repeated in articles published by at least three publications: *Narcity* (2 million monthly unique visitors), *The Coast* (47,200 monthly unique visitors) and *The Queen's University Journal* (14,000 monthly unique visitors). The newsletter *Twelve Thirty Six*, distributed by St. Joseph Media, shared a link to the article with its 6,000 subscribers. All of these republications of the article were the natural and probable consequence of your publication of the article and your active promotion of it. Mr. Kerr also publicized the article in an interview on AM640 on October 16, 2018, which was rebroadcast on October 20, 2018.

You were repeatedly warned prior to publication of the potential for your article to cause major damage to our clients. WE cooperated with you in good faith, providing answers to your questions together with additional context and data to support a fair and balanced article. In WE's interactions with you, our clients made every effort to correct the errors in your understanding of the "facts." Your response was to disregard standards in fair and balanced reporting and maliciously defame our clients.

Despite repeated requests by our clients for an understanding of the focus of your article, Mr. Kerr never once shared with our clients that the focus of the article was child labour. Contrary to journalistic best practices, which would have allowed WE the opportunity to respond, any questions about child labour were buried within dozens of other questions. If you were truly interested in an accurate, fair and balanced article, you would have followed this best practice. If you were interested in the public good, your reporting would have been done without bias or malice, in the spirit of seeking to collect as much information as possible and allowing opportunity for a proper response.

Finally, acting with malice and at the expense of our clients' valuable reputations, Canadaland sought to exploit its media treatment of our clients for brand benefit and the personal financial gain of those involved at Canadaland. This is plainly apparent from your constant solicitation of funds on the basis of the article in additional podcasts; the fact that every visitor to your website is greeted with a pop-up solicitation advertisement, in part to help fund your "investigation"; and the prominent display of your article about our clients on the "Advertise with Us" page at your web site.

In your fundraising efforts you have linked your alleged "investigation" of our clients to your crowdfunding pleas at least six times - once in your October 15, 2018 podcast and on five additional occasions - leading up to the first large-scale WE Day event after the publication of

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your article, WE Day - Manitoba. Canadaland's publications caused our clients harm at this large-scale event.

WE has been transparent with you. WE has not misled you or the public. Our clients request that you immediately publish, without any reservation whatsoever, a full retraction of your defamatory statements that our clients have lied to and misled the public regarding their commitment to ending child and slave labour and that they tolerate, secretly consent to and promote the use of child labour by WE's corporate partners. Your retraction and apology should be published and broadcast with the same prominence as the offending article and podcast. Our clients further request that you immediately and unequivocally apologize to them for your conduct in this matter..


Our clients reserve all of their rights, including their rights to commence legal proceedings against you for substantial general, aggravated, punitive and special damages.

You should also immediately take reasonable steps to preserve all documents relevant to this matter. For this purpose documents include any form of recorded communication, including but not limited to notes from interviews, electronic communications with sources and all documents provided by unnamed sources in the original form in which they were provided, as well as all material, in electronic or hard copy form, otherwise relating to the production or editing of your article and podcast.

I urge you to have your counsel contact me immediately.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

  
Peter A. Downard  
PAD/



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## Appendix

### **(1) Background and context:**

WE and the Kielburgers are known internationally for their dedication to ending child and slave labour. This cause is the foundation of the Kielburgers' reputation and the reason for their founding of WE Charity. The Kielburgers have published extensively on the subject matter and have twice testified before committees of the United States Congress on the subject of child labour. The Kielburgers have persuaded governments to implement financial incentives for education to discourage children from working on sugar cane plantations. They have worked to persuade the Canadian and other governments to enact stronger laws against adults who use child prostitutes. Craig and Marc Kielburger, as well as Roxanne Joyal of WE, have received awards such as the Order of Canada, The Roosevelt Freedom Medal, the Nelson Mandela Human Rights Award, the World of Children Anniversary Award, and the World's Children's Prize for the Rights of the Child. Craig Kielburger's commitment to ending child labour is on permanent display in The Canadian Museum for Human Rights. Their names appear in children's textbooks associated with the elimination of child labour. It is their life's work.

As indicated above, the predominant defamatory sting conveyed by your article and podcast is that WE Charity, ME to WE and Craig Kielburger and Marc Kielburger have lied to the public regarding their commitment to ending child and slave labour and that they tolerate, secretly consent to and promote the use of child labour by WE's corporate partners. This is a serious matter because our clients can only operate with the trust of their supporters and the public. If that trust is eroded through spurious accusations they will not be able to fulfill their social mission. Your defamation of our clients has seriously damaged the reputations of the Kielburgers, WE Charity and ME to WE.

WE was transparent with you prior to your publications. WE has done nothing to mislead you or the public. WE engaged with Canadaland and provided you more than 100 pages of information. A fair evaluation of the facts provided to Canadaland prior to publication, in contrast to the false statements, manufactured evidence, altered documents and misleading content published in your article and podcast clearly leaves Mr. Brown, Mr. Kerr and Canadaland with no valid defence for the defamation of our clients.

As outlined to you in WE's multiple responses prior to publication of your article and podcast, WE works with companies to support their efforts to strengthen their positive social responsibility commitments. WE's engagement with corporate partners aligns with United Nations Sustainable Development Goal 17. WE engages with corporations in partnership to influence the corporations' development of a 'shared value' framework and encourage the corporations' engagement of their employees, consumer base, and supply chain in pro-social actions, volunteerism and campaigns that better the world. As you were also informed, WE considers it to be critical that this be done in order to utilize all levers of social impact.

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Our clients' opinion is based on more than two decades of working to eliminate extreme poverty, the root cause of child labour. While our client respects that others, including Canadaland, may hold differing opinions on how to best tackle this extremely complicated challenge, the core issue is not which theory of change is correct. Instead, the main thrust of our clients' complaint is that Canadaland made numerous false and misleading claims which maligned our clients by misrepresenting their commitment to ending child and slave labour, and conveying the false and defamatory sting that they have lied to the public about that commitment.

WE has entered partnerships with more than 200 companies. Your defamatory publications claim that WE has entered into partnerships with three companies, Kellogg's, Unilever and Hershey's, which are "known to use child and slave labour in their supply chain." In your article you state that, as a result of these partnerships, WE is "falling short on upholding their fundamental values."

Each of these companies will be discussed below.

## *(2) Kellogg's*

Central to your attempt to discredit our client and manipulate readers into believing WE promotes child labour is manufactured evidence, specifically a graphic mock-up of a Kellogg's cereal box bearing the ME to WE logo which you have presented to the public as being authentic.

In your article and podcast, you tell the public that WE is in a partnership with Kellogg's but "denies" that such a partnership exists. "I also have a graphic that a source who worked with WE gave us, and it shows literally two Kellogg's cereal boxes, uh, Special K, Red Berries and Frosted Mini Wheats with a ME to WE logo on the box," Mr. Kerr states in the podcast.

You were informed by WE prior to publication that this alleged partnership simply does not exist. You were further informed that our clients' accounting system shows that they have never received a transfer of funds from Kellogg's. Through your use of the cereal box mock-up, which you present as "evidence" of the alleged partnership, your article knowingly, or in careless disregard for the truth, conveys to the public the defamatory sting that WE has been dishonest with you and the public on this issue, and is secretly indifferent to the use of child labour.

You have defamed our clients after being specifically informed by WE that the cereal box mock-up is not authentic and that no such product exists in the market. You maliciously presented the mock-up as a 'smoking gun' when WE had explained to you prior to publication that the mock-up was created by a third-party agency, that it was used as part of a presentation to WE, and that no WE logo is in fact on any Kellogg's product in the marketplace. Nevertheless, you presented the mock-up so that a reader of your article would reasonably conclude that the image presented by Canadaland was a photo of an actual product. You presented the mock-up in a manner clearly intended to defame our clients by depicting it directly below the WE's quoted words, "ME to WE does not have a partnership with Kellogg's", followed by the words, "But CANADALAND obtained evidence that points to a ME to WE partnership with Kellogg's."



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This alleged “evidence” of a logo on a product would be reasonably understood by an average reader as clear proof of a direct connection between a brand and an endorsing organization and is therefore misleading and defamatory. Your presentation of WE as having been caught in a lie undermined any clarifying statement of our clients referred to in the article.. Canadaland appears to have sought to exploit this misleading narrative throughout the entire article and podcast, using the words “deny”, “denial” and “denies” or the like, 20 times in reference to statements from our clients..

You clearly failed to take reasonable steps to verify the allegation that the mock-up reflects an actual partnership between WE and Kellogg’s. Instead, you relied on an unnamed source who is reported to have said that the graphics “adhere to WE’s internal brand guidelines in terms of specific colours and fonts used”, and you allege that the source “strongly believes the image was made in-house”. The mock-up’s compliance with WE internal brand guidelines is in fact perfectly consistent with the truth that it was created by a professional third-party agency. That the unnamed source only “believes” the cereal box mock-ups were created by WE clearly demonstrates that your source does not know the facts. WE warned Canadaland of this fact multiple times. WE asked Canadaland to reconsider the credibility of its unnamed source. Canadaland chose to ignore this proper concern..

The ease with which a mock-up using a logo can be created without permission of the logo’s owner has been demonstrated by Canadaland itself. In your article, Canadaland even pasted the WE logo on a chart which Canadaland designed to illustrate your narrative to your readership. This was done without any permission or authorization from WE. Your use of manufactured evidence is discussed further below.

You also support your allegation that WE is in a partnership with Kellogg’s by reporting that, “Kellogg’s also told CANADALAND that they did not have a partnership with WE Charity but did not answer if they had one with ME to WE.” That statement is not a verification of the existence of a WE partnership with Kellogg’s. Instead, you presented this statement in a manner plainly intended to damage to our clients by inserting WE’s truthful denial of the alleged partnership together with the mock-up you falsely and maliciously presented as being authentic, so as to convey that WE’s denial is not worthy of belief.

You also support your allegation of a partnership between WE and Kellogg’s on the basis that Walgreens, a partner of the ME to WE Foundation in the United States, included Kellogg’s products, along with at least 26 other products, in a promotional program between Walgreens and the ME to WE Foundation. That Walgreens independently included Kellogg’s products among the many it sold in its promotional program again does not constitute “evidence” of a partnership between WE and Kellogg’s.

To further your claim that this promotion with Walgreen’s suppliers was “evidence” of a partnership with Kellogg’s, you rely on unverified documents from an unnamed source. Mr. Kerr states in the podcast: “And in addition, I have a spreadsheet from a WE source, a former employee that forecasts \$215,000 from quote ‘Walgreen-Kellogg’ unquote. And yet they deny

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that there was any kind of partnership.” Although represented in the article as “proof” of a non-existent partnership, in reality it was an entry on a spreadsheet representing blue-sky thinking, by your unnamed source or someone close to her, of what a partnership amount could be *if* a partnership was pursued. This concept was in gestation but never accepted or formalized in any way.

You further quote an unnamed source, said to have “worked in partnerships at WE”, stating that, “Walgreens has discretion to select ‘supplier partners,’ with which ME to WE would then enter into contracts.” The truth is that no such contract between ME to WE and Kellogg’s exists.

That you publicly accuse our clients of dishonesty regarding an alleged partnership with Kellogg’s bare by a ‘tweet’ promoting your article which you posted on Twitter, stating, “WE denies that their company has a partnership with Kellogg’s”, accompanied by a photograph of the fake cereal box graphics discussed above. To that graphic, you then superimposed arrows, pointing to both the cereal box and the ME to WE logo, in an obvious attempt to emphasize your defamation of our clients.

In short, you have made a representation of fact that was known by you to be false, with reckless indifference to the prospect that our clients’ partners, sponsors, supporters and donors would be induced to question the legitimacy of our clients’ work and the obvious potential consequences for our clients’ pursuit of their mission.

### (3) *Unilever*

WE is a partner of Unilever. WE is proud of that relationship. Unilever is widely considered to be one of the most socially progressive and responsible companies in the world.

You were informed by WE prior to the publication of your article that before entering into its partnership with Unilever, WE reviewed the findings of multiple global organizations, UN agencies, and third-party verification organizations that validated Unilever’s strong and clear commitment to fulfilling the United Nations Sustainable Development Goals, including in Unilever’s supply chain.

Specifically, and again as WE has previously advised you, Unilever and its senior leadership have been the recipient of numerous global certifications and recognition for their commitment to the Sustainable Development Goals, including global leadership in continuously seeking the very best in sustainable sourcing. Awards and recognition include:

- Oxfam awarded Unilever the top position on its Behind the Brands Scorecard, which assesses and rates agricultural sourcing policies of the world’s ten largest food and beverage companies;
- GlobeScan/SustainAbility Top Ranking award, as a leading global corporate sustainability leader for eight consecutive years;



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- 2017 Appeal of Conscious Foundation Award given to Unilever CEO Paul Polman;
- 2015 United Nations Champions of the Earth Award in the Entrepreneurial Vision category awarded to Paul Polman. Paul Polman was named the Vice-Chair of the United Nations Global Compact Board; and
- Unilever has been a member of UN Global Compact since 2000

Your defamatory statement that WE is secretly indifferent to the use of child labour by Unilever is completely false and malicious. The reverse is in fact true.

The focus of WE's relationship with Unilever is not the tolerance and continuance of child labour, but its complete elimination from any Unilever supply chain. WE conducted extensive research prior to the partnership and works with Unilever precisely because Unilever has demonstrated a clear intention and a concrete path toward the complete elimination of child labour from its supply chain by 2020. Unilever owns over 400 different consumer brands and has thousands of inputs into its supply chain. In fact, Unilever has committed to ensuring sustainability of its supply chain and transparent traceability of its supply chain with 100% traceability by 2019 for all crude palm oil Unilever buys. For sugar and cocoa, Unilever is committed to 100% sustainability and the elimination of child labour in its supply chain by 2020.

It would be one thing for you to take issue with WE's approach to child labour as described above. For example, you might wish to argue that no socially responsible organization should have anything to do with a company that, while being committed to eliminating child labour completely from its supply chain and being well advanced in doing so, has not yet finished doing so. But there is no valid defence to knowingly, or in careless disregard for the truth, convey to the public, as you have, that WE's relationship with Unilever demonstrates that our clients have lied to the public regarding their commitment to ending child and slave labour, and that they secretly tolerate, consent to and promote its continuance.

Again, our clients outlined for you in multiple responses that WE works with companies to support their efforts to strengthen their positive social responsibility commitments, and that WE's engagement with corporate partners aligns with United Nations Sustainable Development Goal 17. These facts were all provided in good faith but Canadaland purposefully and maliciously manipulated the facts to defame our clients in a malicious manner.

#### **(4) *Hershey's***

WE Charity is a partner of Hershey's. WE Charity is proud of that relationship. Like Unilever, Hershey's is recognized as a global leader in efforts to prevent child labour from any chocolate supply chains.

As our client clarified to you before publication, WE Charity – working alongside the Boys and Girls Clubs of America and the Harvard Graduate School of Education – partnered with Hershey's around the "The Heart-Warming Project" to help promote social emotional learning.

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There is nothing secret about this. Before entering into that partnership with WE, Hershey's also proactively engaged WE in important conversations to help support their cocoa sustainability strategies.

Like WE's partner Unilever, Hershey's has demonstrated a clear intention and a concrete path toward the complete elimination of child labour from its supply chain. It is a matter of public record that Hershey's is on track to realize its commitment to achieve 100 per cent sustainable sourcing (*i.e.*, third-party verified sourcing addressing a multitude of social issues, including preventing any form of child labour) by 2020. It is also a matter of public record that Hershey's has committed to investing \$500 million through 2020 to support four key missions of particular relevance to this issue: nourishing children, empowering youth, building prosperous communities and preserving natural ecosystems.

As in the case of Unilever, you may disagree with our clients' approach. However, your multiple smears that our client has sought to deceive you and the public on the matter is false. There can be no valid defence for your reckless defamation of our clients' fundamental integrity and reputation.

In your article you allege that ME to WE has a partnership with Hershey's and that WE has "denied" that. Again, the defamatory thrust of the relevant portions of your article is that our clients have lied to the public in communicating that denial to you when they clarified that the partnership is between WE Charity and Hershey's.

Once again, you have undermined the public trust of WE, and intentionally or with reckless disregard for the truth conveyed to the public that our clients are not truly committed to ending child and slave labour, and that they tolerate, secretly consent to and promote the use of child labour by their corporate partners.

## **(5) *Factually incorrect financial information presented as "evidence"***

In yet another attempt to mislead your audience and discredit our clients, Canadaland used two images as "evidence" to illustrate factually incorrect information about WE's partnerships and WE Charity's sources of funding. In particular, you presented PNG files entitled "key-findings-total-existing-revenue" and "key-findings-top-20-partners" to bolster the legitimacy of your unnamed source and to elevate the source's claims, when you were told by our clients prior to publication that the information in those files is inaccurate.

You included these inaccuracies in both your article and podcast, as follows:

"Their top five partners in terms of revenue at the time were household names like Allstate (\$7.3 million), Microsoft (\$3.9 million), Unilever (\$3.7 million), RBC (\$3.3 million), and Walgreens (\$2.3 million). The charity's forecasted annual revenue from all partnerships was approximately \$47 million." – from the article dated posted October 15<sup>th</sup>, 2018



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“Because Canadaland has financial information that has never been reported before. So a source actually provided us documents that show that in 2016/17. WE forecasted \$47 million in revenue from corporate partners alone. That's more than double what ME to WE has given in nine years.” – Jaren Kerr, 37:34 of the Canadaland podcast

“I think what it really illustrates is that the scale and the amount of business they're doing with corporate sponsors really dwarfs what their for-profit social enterprise is kicking back into the charity. \$20 million over nine years versus \$47 million in revenue in just one year.” – Jesse Brown, 37:53 of the Canadaland podcast

Using provocative and sensational language such as a reference to matters that have “never been reported before”, Canadaland implied that it was privy to verified internal WE documents, thus adding legitimacy to the unnamed source and the information and statements provided to you. In fact, both images were generated from draft PowerPoint slides created in June 2017 as part of an internal planning process. Your unnamed source was involved in the creation of those documents. These were draft documents that were not accepted as factual or verified at that time, as they were simply in draft format. The documents included incorrect information and were updated with accurate and verified information in August of 2017. You were clearly told prior to publication that the figures you quoted were factually incorrect. Moreover, without being afforded by you with an opportunity to view the “evidence” to verify the legitimacy of the documents, our clients told you that a financial number of the magnitude you referred to (\$47 million) would reflect a large diversity of hundreds of partners, including foundations, institutional partners, and private fundraising partners dedicated to supporting their domestic and international work.

As a clear example of the fact that these source documents were inaccurate, Canadaland claimed that WE Charity received \$3.7 million from Unilever in 2017. As WE told you prior to publication, this number is incorrect. You were told prior to publication that Unilever had not provided \$3.7 million in 2017, and that the figure reflected an outstanding accounts receivable amount. Again, you were urged to further question the credibility of your source. Instead, you published information that our client informed you was not accurate. Had Canadaland heeded our client's advice to check the veracity of the source, or provided the full documents to our clients for advance comment, you would have discovered that the data in the documents had not been verified.

## **(6) *Altering of a document and using it as key evidence:***

In addition to presenting inaccurate draft documents created by your unnamed source as being factually correct, you published an image which was, in fact, altered. The image entitled “key-findings-top-20-partners”, embedded in your article, was created by selectively altering one of the draft documents provided to you. Canadaland or its unnamed source removed half the content from the PowerPoint slide and failed to disclose its alteration to the public, so as to

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present the material as if it represented an authentic, unaltered and verified internal document of WE.

The inclusion of the true and unaltered list of partners would have directly and clearly contradicted the article's narrative regarding corporate partnerships, as well as the statement in the article that in a single year WE Charity raised "\$47 million in revenue from corporate partners alone".

## (7) *The defamatory sting in your podcast*

The defamatory sting of your article – again, that our clients have lied to the public regarding their commitment to ending child and slave labour and that they tolerate, secretly consent to and promote the use of child labour by its corporate partners – is also conveyed by the podcast you published on the Canadaland website on October 15<sup>th</sup>, 2018.

For example:

- As to the libel that our clients have misled the public regarding a relationship between them and Kellogg's, Mr. Kerr states that although WE denies the existence of a partnership with Kellogg's, he has found "extensive proof" of "a partnership between [Kellogg's] and ME to WE";
- As to the libel that our clients have misled the public regarding a relationship between WE to ME and Hershey's, Mr. Kerr states, "And there's no question about a partnership between Hershey's and WE Charity. But as for ME to WE, Canadaland was told flatly that no partnership exists. They deny it. But I found an image in a publication called Shopper Marketing, it's a trade publication, and it shows that ME to WE was part of a promotional campaign to sell Hershey's chocolates in Walgreens stores...";
- Mr. Brown states to Mr. Kerr, "Okay, so some of these partners they say, 'Yes we have partnered with them,' and some of them they deny it. But you have evidence that challenges that and we're going to get to that.";
- Mr. Brown states, "I can't even call these 'claims' that these companies like Hershey's that are being connected to child labour, or 'accusations' because Canadaland knows that these companies that WE works with are selling products made with child labour. So, what does the WE organization have to say about that?" Mr. Kerr replies, "They say a lot, but it's difficult to summarize. And it's difficult because there's so much of it and because it's contradictory...";
- As to the libel that our clients have misled the public regarding a relationship between them and Kellogg's and Mr. Kerr's claimed "extensive proof" that the partnership exists, in particular the cereal box graphics discussed above, Mr. Kerr states, "They deny it's real. They suggest it was used by a different company to pitch them. But we received this



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picture from a former WE employee, not a third party, and someone with expertise in their branding said that these images matched WE's brand guidelines in terms of the colours and the fonts...";

- As to the libel that our clients have misled the public by denying a partnership with Kellogg's, and the implication of the article that WE has entered into a contract with Kellogg's, discussed above, Mr. Kerr states, "But a source that worked at the company said that ME to WE does in fact enter into a contract with these Walgreens vendors...";
- As to the libel that our clients tolerate, secretly consent to and promote the use of child labour by its corporate partners, Mr. Kerr states, "WE said, in a long response and I quote, 'No company is perfect, and that in this day in age no large company doing business on a global scale can keep child labour out of their supply chain.' So that sounds like an admission to me."

Mr. Kerr's defamatory gloss regarding WE's response flatly misrepresented the statement WE actually provided to him on the point.

## **(8) *ME to WE Foundation in the United States***

Canadaland did not stop their misrepresentations at child labour. You knowingly or in reckless disregard for the truth presented factually inaccurate information regarding the ME to WE Foundation in the United States, to increase the sensationalistic nature of your report and damage the good reputations of our clients. These misrepresentations were repeated by both Mr. Brown and Mr. Kerr on your podcast.

In multiple documents provided to Canadaland, our clients clearly outlined to you information regarding the ME to WE Social Enterprises in Canada and the ME to WE Foundation in the United States, as follows:

"Given the global nature of our work, entities are incorporated in multiple countries, including that of our work with ME to WE. In Canada, due to the structure of the Canadian tax code limiting the ability of charities or foundations to engage in commercial enterprises to raise funds for their cause, we were forced to incorporate ME to WE Social Enterprises within technically a 'for-profit' status, but then also create a formal process to prove, beyond reproach, that it exists for the "social good". To ensure that the social enterprise is to the benefit of the charity, we further built strong controls via multiple layers of governance, reporting, and third-party review by government agencies and other entities.

"However, it is equally important to note that other countries have more progressive tax systems governing social enterprise activities, including the United States.

"As such, in the United States, we have therefore incorporated the ME to WE Foundation (a legally incorporated 501 C3 foundation), which is designed to

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provide products and services to support the work of WE Charity in the United States. It is important to note that the entity is a “Foundation” in legal status and it is designed for social benefit.

“(....) The companies and activities you referenced above have their relationship with the organization(s) which are legally based in the United States. (...) We want to make explicitly clear that if you are making any claims regarding the engagement US based companies, that this distinction is made for your reader.

“It is important to further state that these companies have this relationship with WE Charity or “The ME to WE Foundation”, (bolded in the document) especially anything which has to do with your new line of questioning, including “Track Your Impact”.”

It is clear in the podcast that both Mr. Brown and Mr. Kerr were aware of the legal structure of the ME to WE Foundation in the United States, but chose to make false statements which mislead your audience, including the following:

“That’s a lot. So ok if I say ‘WE’, I’m talking about the charity and the business. If I say ‘WE movement’, I’m talking about the charity and the business. Obviously if I say ‘WE Charity’, that’s just the charity. And if I say ‘ME to WE’, I’m speaking about the business. And I know that in the States ME to WE is called the ME to WE Foundation, which sounds like a charity but it’s not, that’s a business.” – Jesse Brown, 36:51 of the Canadaland podcast

“Yes....” – Jaren Kerr, in response to Jesse Brown’s above comment

As shared with you in multiple documents, ME to WE’s promotional Track Your Impact programs with Walgreens in the United States, the subject of your reporting, are carried out through the ME to WE Foundation. The ME to WE Foundation is a legally incorporated foundation under the United States legal equivalent of charitable registration in Canada with the Canada Revenue Agency. The ME to WE Foundation provides products and services to support the work of WE Charity in the United States.

To state that the ME to WE Foundation in the United States is actually a “for-profit business”, particularly having regard to the full information that you were provided about the Foundation which our clients explained to you,, clearly misrepresents the truth and causes great harm. Your statement that our clients are operating a for-profit company which calls itself a “Foundation” conveys the innuendo that our clients are purposely seeking to deceive the public by using a term that denotes a charitable organization for their personal financial profit. This is profoundly damaging to our clients, particularly in the charitable sector, where the meaning of the term “Foundation” is widely understood by the average public and those who work in the charitable sector as denoting a charitable purpose.



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## **(9) ME to WE Social Enterprises in Canada**

Social enterprise represents an entire sector recognized in the United Kingdom, many European countries and 40 U.S. states. The model has won a Nobel Peace Prize. The social enterprise model has been stalled in the gestational stage in Canada, where our clients have been among the model's most vocal champions. Craig Kielburger recently testified before the Special Senate Committee on the Charitable Sector to discuss recent recommendations to the Canadian government by the Social Innovation and Social Finance Strategy Steering Committee, including by addressing the legal and regulatory issues impeding charities and non-profits from engaging in social innovation, social finance and social enterprise. In February 2018 the Chief Economist for Canada's Charitable and Non-Profit Sector released a Discussion Paper, entitled "Beyond Synergy: Charities building the future Canadians want", which made the same recommendations. As this model is just breaking through bureaucratic barriers in Canada and is very important to the economic viability of charities in this country, it is vitally important that the record be set straight.

Despite having been provided documentation explaining the relationship between WE Charity and ME to WE Social Enterprises in Canada, your article and podcast on more than 25 occasions knowingly or in reckless disregard for the truth misled your audience with unequivocal statements that ME to WE Social Enterprises is a "business". Examples include:

"I did know that Craig Kielburger and his brother had built a successful organization, the WE movement, to take on that fight. But what I didn't know is just how successful the Kielburgers have been. WE is enormous. It employs over 1,000 people; it has WE Charity, WE Villages, WE Schools, as I said it has a for-profit wing. A company, called ME to WE." – Jesse Brown, 3:35 of the Canadaland podcast

"And then there's also Kellogg's, uh, which was found by Amnesty to also use this child labour produced palm oil. I found extensive proof of a partnership between them and ME to WE – again the for-profit half of the We organization. But WE denies any partnership there." – Jaren Kerr, 22:30 of the Canadaland podcast

"What they seem to be suggesting is that if we question the arguably harmful things that they do as a private for-profit company, we are hurting the inarguably helpful and good things they do as a charity. Which seems contradictory to me because so much about what they had to tell us in their responses was that their charity and their business are totally separate." – Jesse Brown, 36:00 of the Canadaland podcast

As you were told prior to publication, The ME to WE Foundation in the United States is a legally-registered Foundation under the United States equivalent of charitable registration with the Canada Revenue Agency in this country. In Canada, however, due to the structure of the Canadian tax code limiting the ability of charities or foundations to engage in commercial

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enterprises to raise funds for their cause, ME to WE Social Enterprises is incorporated as a for-profit as a technical matter, but exists entirely for the social good, with strong governance and fiduciary systems in place.

ME to WE Social Enterprises is a model of sustainability in the social sector. It is committed to providing a minimum of 50 per cent of profits to WE Charity, but often donates as much as 80 per cent of its annual profits to WE Charity. The remainder is reinvested in its entirety to grow the social mission. ME to WE has to date provided over \$20 million in cash and in-kind cost offsetting to WE Charity. As shared with you before publication, our clients' governance and financial accountability systems were, in part, designed by the Miller Thomson and Torys law firms. They have been independently verified by government agencies (including the Ontario Guardian Public Trustee) and a retired Supreme Court Justice, and celebrated by groups such as B Lab. All of this information was presented to you prior to publication and as critical information, yet you chose not to disclose it to the public. It is apparent that this information about the actual structure, governance and independent expert reviews of ME to WE Social Enterprises because it did not fit your defamatory narrative.

Any reasonable review of the facts and documents provided to Canadaland demonstrates that ME to WE has dedicated extensive resources to achieve the highest level of social responsibility, and that it is only registered in Canada as a "business" because it legally has to be. You have damaged our clients through blatant misrepresentation, innuendo and factual inaccuracies. There is no valid defence for these factual inaccuracies, especially since our clients provided you with accurate information prior to publication.

## ***(10a) Malicious intent***

Mr. Brown's historical bias can be traced back to the twilight years of the now defunct *Saturday Night* magazine. Our client, Craig Kielburger, sued that same magazine after its 1996 publication of "The Most Powerful 13-Year-Old in the World", a defamatory profile of my then-13-year-old client.

The lawsuit was filed in January 1997 and it represents our client's one and only lawsuit against media. In 2000, *Saturday Night* agreed to pay our client \$319,000, which he subsequently donated to his charity.

Mr. Brown has presented the *Saturday Night* suit, decades old, as evidence of an allegedly litigious nature of our clients. What Mr. Brown has failed to say, however, is that he worked at *Saturday Night* after the lawsuit was settled, with individuals who were employed at the publication during the course of the action. In writing about and discussing on podcasts the old *Saturday Night* case, Mr. Brown has never disclosed this conflict.

Canadaland has consistently conveyed its hostility toward WE Charity and its co-founders, including previously attacking a well-respected media literacy partnership active in classrooms between *The Globe and Mail* and WE Charity in a previous podcast, "Why it is important to kick these people when they are down", posted on September 27, 2017. That podcast episode centered





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on WE's media partnerships and called into question the integrity of our clients, suggesting that they were attempted to dupe the public.

This hostility toward our client in your October 15, 2018 podcast is reflected in its opening, with Mr. Brown stating, "This is a story that we have been trying to tell you for over 3 years." He then goes on to claim that our clients engaged in "interference" with a CBC documentary because it was critical of volunteer trips and "their ME to WE organization (their for-profit business)." Mr. Brown further confirms his active pursuit of our clients by stating in the podcast introduction, "I have assigned reporter after reporter here to talk to those sources and work towards a story."

## **(10b) Malice: Reckless reporting**

In addition, Canadaland did not engage our clients in good faith during the preparation of your recent article. The various email communications between Mr. Kerr and our clients consistently display a secretive posture on Mr. Kerr's part, consistent with an intention of Mr. Kerr to attack our clients unfairly. For example:

- On September 27, 2018, WE asked Mr. Kerr numerous specific questions about his intentions, the work he had done to date and the steps he was taking to ensure the information he had received was reliable. On September 28, Mr. Kerr responded that he would be "happy to provide as much clarity as possible", but in fact did not answer WE's questions. Instead, he deflected WE's inquiries by stating, "...[I]f you require that we answer all of your questions about our inquiries before you agree to answer ours, that is not a negotiation or process we can engage in";
- At 6:30 p.m. on October 5, 2018, the Friday before the Thanksgiving long weekend, Mr. Kerr sent almost three single-spaced pages of questions to WE, coupled with a request that they be answered within one business day and a statement that this was "the last set of questions we have for this article". He provided no information as to when you intended to publish. On October 8, in response to WE's protests of Mr. Kerr's unreasonable deadline, Mr. Kerr wrote: "I spoke to my editor and we agree that the overwhelming majority of the questions we asked in the last round of questions are ones that WE should be able to answer immediately";
- On October 9, 2018, after being informed of WE's request for further time to respond, Mr. Kerr wrote, "It is up to you when you send us responses. Any information provided after the deadline will be incorporated into our coverage as needed";
- On October 12, 2018, WE again asked Mr. Kerr for disclosure of any allegations being made against WE, either in his reporting or by others whose claims would be reported by him. Mr. Kerr refused to do so. He again refused to deal with WE's request in a straightforward manner by writing, "The focus of our story is directly related to the questions I have asked WE."

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## **(10c) Malice: Reckless and improper use of unnamed sources**

Your hostile and reckless approach is further confirmed by your use of unnamed sources. The *Ethics Guidelines* of The Canadian Association of Journalists state that unnamed sources should only be used “when there is a clear and pressing reason to protect anonymity, the material gained from the confidential source is of strong public interest, and there is no other reasonable way to obtain the information.” None of these conditions are apparent in this matter. In addition, the *Ethics Guidelines* clearly state that journalists need to “independently corroborate facts” from unnamed sources. You clearly failed to do so., The *Ethics Guidelines* also state that anonymous sources are not to be yused to “take cheap shots at individuals and organizations”. That you have done so in your alleged “investigation” of our clients is obvious.

Had you independently corroborated statements made by and documents provided by your unnamed source, principles of responsible journalism would have required you to exclude them from your article and podcast as being unverified. It is apparent that most of the documents provided by your unnamed source were created, in part, by that same source. They were simply draft internal documents that were never verified or accepted as accurate by WE. Your failure to disclose the origin of the documents is both careless and contrary to the *Ethics Guidelines*. Again, it is apparent that disclosing this important information, or choosing not to publish the uncorroborated documents, would not have fit your intended narrative.

## **(10d) Malice: Reckless omission of facts and statements**

Your malice is further confirmed by your knowing omission of relevant statements by our clients. When our clients’ statements were included, they were often either presented with indifference and in a manner that called into question the credibility of our clients, as noted above, or in an insincere and glib fashion, implying that our clients’ statements were not worthy of the audience’s consideration..

Your indifference to providing a fair and balanced article was further conveyed in your post entitled, “All Of WE’s Answers To CANADALAND (And Letters From Their Lawyers).” In that post, also published on the Canadaland website on October 15, 2018, you state: “In deciding what parts of it to include in his story, Jaren and his editors looked for responses that directly addressed the questions we asked. But in the interests of transparency, and to fully represent everything WE had to say, we are also publishing the documents they provided to us in full.” Rather than providing a fair and balanced report, you put the undue onus on the reader to comb through the information provided to you in response to your questions. To simply provide a link on your website to our clients’ responses does not discharge your obligation of responsibility or your obligation of accurate, fair and balanced reporting. It in fact demonstrates your indifference to that obligation.

Contrary to what the headline of that post would lead readers to believe, Canadaland failed to actually publish “all of WE’s answers” and documents provided before publication. More than a dozen email exchanges, most of which convey Mr. Kerr’s secretive posture as described above, are absent. Most notably absent from the documents posted by Canadaland is a key document



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entitled “Erin Barton information for Canadaland”, which was emailed to Mr. Kerr on October 11. While Canadaland quotes three sentences in its article, you failed to include relevant context that did not fit the narrative of the article.

## ***(10e) Malice: Article failing to match the claims in headline***

In your attempt to malign our clients’ reputations and to generate a sensational headline, you chose to use the headline “Craig Kielburger Founded WE To Fight Child Labour. Now The WE Brand Promotes Products Made By Children.”, as clickbait on your homepage and in social media. Through your use of this headline you set the tone from the outset for your depiction of our clients as having deceived the public, further serving to discredit and statements of our clients referred to in your article.

## ***(10f) Malice: Prolonged attempted shaming***

In the three weeks since your article was first published, Canadaland has additionally published 11 podcasts on various subjects, including a year-long investigation about Thunder Bay. Yet the article in question remains pinned to the top position on Mr. Brown’s twitter account and in a prominent position on the Canadaland homepage. Not even the extensive Thunder Bay content, which was heavily promoted in the weeks leading up its release and described by Mr. Brown as “the most anticipated and ambitious show we have ever done”, has displaced your article about our clients from the most prominent position on Mr. Brown’s Twitter account. Mr. Brown has decided to describe himself via his Twitter biography as “Shame wizard”, – a statement which is clearly visible adjacent to his pinned tweet “CANADALAND investigated @craigkielburger’s WE Movement. @journojaren reports.” True to this self-appointment, Mr. Brown has maliciously prolonged and amplified his shaming of our clients.

## ***(10g) Malice: Intimidation and financial gain***

Mr. Brown also clearly stated during your October 15, 2018 podcast that “We are not done.” He has continued with his intimidation tactics even after that post and all the way up until the day before WE Day Manitoba, stating, “Jaren is continuing the reporting on that story as I speak.” You have also made clear that your motivation for your attacks on our clients is your financial gain, starting with more than 13 minutes (8:50 to 21:50 and again from 47:43 to 48:02) of your October 15 podcast dedicated to Mr. Brown soliciting crowdfunding, and continuing as follows:

“And that is why, if we reach our next goal of this crowdfunder, Jaren Kerr will be offered a permanent full-time job with us. And he has told me that he is very interested in that job. And everyone else here, except for me, will get a raise as well when we reach that goal.” – Jesse Brown, 1:29 of the SHORTCUTS podcast posted October 18, 2018

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“It’s crowdfunding season at Canadaland. And while the money doesn’t go to us, it does go to some pretty incredible things, like the recent WE investigation...” – Jen Gerson, 00:00 of OPPO podcast posted October 22, 2018

“Our goals this year are to improve compensation and to hire Jaren Kerr fulltime. He is the talented young reporter, who worked for four months on the investigation of the WE organization that we brought you last week.” – Jesse Brown, 01:22 of CANADALAND podcast posted October 22, 2018

“And thank you to the hundreds of people who have become patrons who are not hearing this because more because most of them are getting ad-free versions of this. But I have to tell you that the pace we are going, we’re going to miss our goals. We’re doing well; we’re not doing well enough. If we are going to do the things we want to do, if we are going to hire Jaren Kerr, who spent four months investigating the Kielburgers’ organization, if he’s going to become a staff member here and continue to investigate things and put that kind of time into deep dive investigations, we need more help now.” – Jesse Brown, 0:05 of the SHORTCUTS podcast posted October 25, 2018

"This past year is also the year we hired Jaren Kerr to spend four months full-time investigating the Kielburgers' WE Movement. And we did that with no revenue attached to that project because that's what that story needed. And it needs much more. And Jaren is continuing the reporting on that story as I speak." – Jesse Brown, 3:26 of the CANADALAND podcast posted October 29, 2018

You have also used your alleged “investigation” of our clients as a means to solicit new patrons through pop-up advertisements on your website. At your website’s “Advertise with Us” page (<http://www.canadalandshow.com/advertise-with-us/>) you have prominently included a digital image of the WE logo with the phrase, “Inside WE Canadaland Investigates” linking to the article.