

IN THE MATTER of the *Human Rights Code*,  
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before the  
British Columbia Human Rights Tribunal

BETWEEN:

BRITISH COLUMBIA TEACHERS' FEDERATION/  
CHILLIWACK TEACHERS' ASSOCIATION

COMPLAINANT

AND:

BARRY NEUFELD

RESPONDENT

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FORM 1.3 – COMPLAINT FOR GROUP OR CLASS

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**Introduction**

1. Trustee Barry Neufeld of the Chilliwack Board of Education (the “Board of Education”), School District No. 33 (the “School District”) has made and published and continues to make and publish discriminatory homophobic and transphobic statements.
2. This complaint, as amended, alleges that ~~As as~~ a trustee for the ~~board~~ Board, Trustee Neufeld has:
  - a. discriminated against teachers regarding their employment contrary to section 13 of the Human Rights Code (the “Code”); ~~Trustee Neufeld has also~~
  - b. published discriminatory statements contrary to section 7 of the Code; and
  - c. retaliated against former BCTF President Glen Hansman contrary to section 43 of the Code.(the “Complaint”).

## The Parties

3. At all times material to this Complaint, Barry Neufeld was is a trustee of the School District. Trustees are elected to serve as members of the Board of Education and oversee the delivery of public education in the School District. The *School Act* sets out trustees' responsibilities.
4. The Complainant British Columbia Teachers' Federation ("BCTF") is the certified bargaining agent representing teachers employed by all public school boards. The Chilliwack Teachers' Association ("CTA") is a local of the BCTF.
5. The BCTF and CTA (collectively, The the "Complainants") make this ~~complaint~~ Complaint on behalf of their members who are employed by the School District, including those who identify as gay, lesbian, bisexual and transgender and members who differ on their basis of gender identity or gender expression.

## Facts

6. The term SOGI refers to "sexual orientation and gender identity". It is an inclusive term relevant to all individuals regardless of where they identify on the sexual orientation or gender spectrum. SOGI 1 2 3 is a collaboration involving the ARC Foundation in partnership with the BCTF, the Ministry of Education, UBC Faculty of Education and LGBTQ community organisations to share SOGI-inclusive tools and resources in three areas: policies and procedures, inclusive environments and curriculum resources for educators. There is no SOGI curriculum, but SOGI resources that align with the curriculum can be used in many different subject areas. SOGI 1 2 3 materials are available online: <https://www.sogieducation.org/> and support inclusive environments in schools as required by the ~~Human Rights~~ *Code*, including the grounds of sexual orientation and gender expression.
7. Teachers are required by the *Code, School Act* and associated regulations, and *Teachers' Act* and associated regulations to deliver an inclusive curriculum for all students in a safe school environment.
8. On or about October 23, 2017 Trustee Neufeld posted a discriminatory statement on his Facebook account addressing what he terms the SOGI "program". His statement included the following:

...At the risk of being labelled a bigoted homophobe, I have to say that I support traditional family values and I agree with the College of paediatricians that allowing little children choose to change gender is nothing short of child abuse. But now the BC Ministry of Education has embraced the LGBTQ lobby and is forcing this biologically absurd theory on children in our schools. Children are being taught that heterosexual marriage is no longer the norm. Teachers must not refer to "boys and girls" they are merely students. They cannot refer to mothers and fathers either. (Increasing numbers of children are growing up in homes with same sex parents)

If this represents the values of Canadian society, count me out! I belong in a country like Russia, or Paraguay, which recently had the guts to stand up to these radical cultural nihilists...

9. Trustee Neufeld's Facebook post prompted a variety of responses which were also posted on his Facebook page.
10. The American College of Pediatricians to which Trustee Neufeld refers is a small socially conservative group founded in the United States in 2002 as a protest against the American Academy of Pediatrics support for adoption by gay couples. The American College of Pediatricians has been listed as a hate group by the Southern Poverty Law Centre.
11. Trustee Neufeld subsequently deleted ~~the~~ his October 23, 2017 post.
12. On October 25, 2017, Trustee Neufeld issued a news release purporting to be an apology and stating, "I want to apologise to those who felt hurt by my opinion... I am critical of an educational resource, not individuals". Trustee Neufeld went on to say, "I firmly believe that implementation of the SOGI 1 2 3 resources needs to be reviewed by engaging parents and teachers in conversation on this topic before full implementation".
13. On November 21, 2017, Trustee Neufeld was a keynote speaker at an event organised in Chilliwack by Culture Guard, an organisation that describes itself as working "to ensure that our nation's statutes and concepts of "community values" used by agencies will reflect and protect the natural family, parental rights, the sanctity of life, liberty, respect, judicial accountability and the proper rule of law..."
14. At that event, Trustee Neufeld described SOGI as "an institutionalisation of codependency encouraging and enabling dysfunctional behaviour and thinking patterns" and the "codling and encouraging what I regard as the sexual addiction of gender confusion". Trustee Neufeld stated that using SOGI 1 2 3 resources amounted to "gaslighting" and an "attack on the foundation of the child's being which is child abuse". Trustee Neufeld also stated that "rushing into the use of puberty blockers, hormone therapy and gender reassignment is child abuse".
15. A video of Trustee Neufeld's November 21, 2017 ~~the~~ speech is available online: <https://www.langleytimes.com/news/chilliwack-school-trustee-says-he-will-run-on-gender-positive-platform-next-year/>
16. On or about December 18, 2017, Trustee Neufeld posted another discriminatory statement on his Facebook account wherein he referenced his position as a school trustee stating, "My job description is

that of policy maker. And the current emphasis is on inclusion. I do not want to give in to the self-serving agenda of the LGBTQ+ groups who want to be given priority as the most downtrodden of victims...” He went on to make additional discriminatory statements including the following:

But the scary thing is that it has already demonised people of faith who believe that God created humans male and female: In the image of God. Here is my prophecy to the Church. If you don't get off your duffs and push back against this insidious new teaching, the day is coming (maybe it is already here) when the government will apprehend your children and put them in homes where they will be encouraged to explore homosexuality and gender fluidity. There already is a Special group foster home for LGBTQ+ kids in Red Deer, AB.

You think that is impossible? Well the Canadian government did exactly that to Aboriginal families until a few decades ago. Determined to destroy the traditional teachings of their culture and re educate children into the prevailing worldview of the government. The Government have already ensured that families with traditional values will not be approved as foster homes and are refused the right to adopt children. But the government has always done a horrid job of being a parent.

17. Also in December 2017, the Chilliwack District Parent Advisory ~~Council~~ Counsel (“DPAC”) asked Trustee Neufeld to step down. Trustee Neufeld responded by ~~launched~~ launching a letter writing campaign against the chair of the DPAC. His January 1, 2018 email contained an attack on the DPAC chair and on transgender people, including the following:

...Not all of these parents subscribe to the unscientific gender-fluid theory that “*what is between one's legs is not always the same as what is between one's ears.*”

I am aware there are about 20 children in Chilliwack who fit this category. Some parents are taking the “*wait and see approach*” hoping that their child will grow out of this confused phase, and indeed about 80% do eventually become content with their gender assigned at birth. Other parents are taking a more proactive approach, encouraging their child to find gender appropriate activities, even though they may not be stereotypical: i.e. taking an effeminate boy to figure skating lessons, or signing up a rough and tumble girl for Karate. Only a few parents have caved in to the new trend in treatment for gender dysphoria and will support their child on the path of dressing in a different gender, taking on a new name, and heading towards hormone blockers, hormone therapy and ultimately gender reassignment surgery. These parents may have been overwhelmed by the threats of the transgender radicals: “*Do you want a dead son or a living daughter (or vice versa).*”

I do not “*hate*” transgender children: They can't help the way they feel. They should certainly NOT be bullied or teased. But I advocate for the least intrusive way of helping them: hopefully to accept the gender they were assigned at birth. Ms. Hodge is taking sides with only a handful of radical parents, and alienating the vast majority of parents who trust biology and common sense.

18. Trustee Neufeld's Facebook page was not publicly available for some time, but he subsequently made it public again prior to the Complaint being accepted for filing.

19. On January 18, 2018, the School Board passed a motion during an in-camera meeting requesting Trustee Neufeld's resignation because of the Board of Education's loss of confidence in Trustee Neufeld's ability to effectively perform the duties of a trustee. Trustee Neufeld did not resign.

20. On January 29, 2018, the BCTF/CTA filed the Complaint. Following correspondence with the Tribunal, the BCTF/CTA modified and re-filed the Complaint on April 4, 2018. On April 20, 2018, the Complaint was accepted for filing by the Tribunal.

21. At the February 13, 2018 School Board meeting, during a presentation from a representative of the Ministry of Children and Family Development, Trustee Neufeld made comments suggesting children who identify as LGBTQ are in need of protection and that the Ministry should conduct an assessment on these children. Trustee Neufeld stated:

Currently the policy of the BC Teachers' Federation is that if a child confesses to a School District employee that they have feelings of same sex attraction or they may be transgender the policy is that they will not notify the parents, but instead they will call in your Ministry to do an evaluation. So my question to you is what are your policies and protocols in determining if the child is in need of protection and number two what are your services and programs to restore harmony to this family?<sup>1</sup>

22. Also at the School Board meeting on February 13, 2018 Trustee Neufeld again made discriminatory statements comparing supporting transgender students and using SOGI 1 2 3 resources to governments' oppression of indigenous peoples through residential schools. Trustee Neufeld read from a prepared statement as follows:

After the elections, each District gave a presentation on how they are working to improve aboriginal achievement in their district. And a common problem for each district is how to reach out to aboriginal parents and get them to support their children's education – but aboriginal parents still remember the oppression of the days of residential schools when the government tried to eradicate what they considered were superstitious values of the aboriginal traditions surrounding family and community.

I couldn't help but thinking that this kind of oppression is happening again 150 years later. The BC School Act, the Canadian Charter of human rights and international law uphold the right of parents to direct all aspects of their children's education. The Ontario Court of Appeal in a recent decision in November stated clearly the right of parents to care for their children and make

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<sup>1</sup> Chilliwack School District Board Meeting (13 February 2018), online: <https://www.youtube.com/watch?v=kHSEd5DpIYE> at 43:20.

decisions for their wellbeing including decisions about education is primary and the state's authority is secondary to that parental right.<sup>2</sup>

23. On March 19, 2018, Trustee Neufeld posted another discriminatory statement on his Facebook page, including stating “Not everyone is as rich as Bruce Jenner, who with plastic surgery, and tons of cosmetics manages to create a pretty convincing caricature of a woman” and “activists are using mafia and Bolshevik techniques to convince the most powerful sectors of our society to acquiesce to their demands”.<sup>3</sup>
24. In or around July 2018, Trustee Neufeld also posted a discriminatory meme on his Facebook page that had a photo of a cow and a child on it and stated: “When you think injecting cattle with hormones is evil but injecting kids with hormones to change their gender is just fine”.
25. On October 12, 2018, Trustee Neufeld filed a Notice of Civil Claim in the BC Supreme Court alleging that then BCTF President Glen Hansman had defamed him (the “Defamation Claim”). In January 2019, Trustee Neufeld amended the Defamation Claim.<sup>4</sup>
26. The Defamation Claim was based on statements made by Mr. Hansman with respect to the issues raised in the Complaint, Mr. Hansman's statements about the Complaint, and the Complaint itself. The allegations in the Defamation Claim begin at the same point in time as this Complaint: with the Facebook post of October 23, 2017, described in this Complaint.
27. A substantial portion of the Defamation Claim was based on the filing of the Complaint itself, and commentary published by third parties about the Complaint. Eleven separate paragraphs of the Defamation Claim are explicitly devoted to the Complaint. Some paragraphs allege, for example, that:
22. In early 2018, under direction of the defendant, the BCTF did without seeking approval from its members, file a complaint against the plaintiff at the BC Human Rights Tribunal ...
23. As abusive and absurd as the above BCTF and CUPE human rights “complaints” are, upon filing them, the defendant and others immediately disseminated them to the public through the media, using their own complaints as an opportunity to defame the plaintiff....
24. On April 10, 2018, The Star Vancouver newspaper published... an article under the headline “B.C. teacher's' union files human rights complaint against Chilliwack school trustee Barry Neufeld over allegations of transphobia” ...

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<sup>2</sup> Chilliwack School District Board Meeting (13 February 2018), online: <https://www.youtube.com/watch?v=kHSEd5DpIYE> at 2:31:03.

<sup>3</sup> Barry Neufeld, (19 March 2018) posted on Facebook.

<sup>4</sup> The Defamation Claim was dismissed in accordance with the *Protection of Public Participation Act*, see: *Hansman v. Neufeld*, 2023 SCC 14.

26. [...] the defendant's comments to a reporter were broadcast on CBC radio and also published on the world online by CBC under the headline "Controversial Chilliwack school trustee facing human rights complaint"...<sup>5</sup>

28. On October 19, 2018, Trustee Neufeld posted another discriminatory statement on his Facebook account referring to inclusive education teaching about LGBTQ families as an "evil ideology" affecting children's mental health. Trustee Neufeld wrote:

If you haven't gone to the ELECT Kaethe JONES for School Trustee site within the last 2 days please do so. She has critically looked at the SOGI 1-2-3 primary grade lesson plans and they promote same sex marriage, question traditional marriage, teach children to question traditional gender expectations, disrespect and dishonor to parents and the values they teach. In grade 10 – 12, SOGI 1-2-3- introduces the topic of sodomy!!! Only 1 lesson out of 15 is about anti-bullying: called "Blow the Whistle on Name-calling." 10 / 15 lessons cite the Pride Education Network <http://pridenet.ca/> as a resource for the lessons. Who's agenda do you think this SOGI 1-2-3 is? Vote with your children's future health in mind. Today Kaethe talked to a parent who said a friend's children in gr. 4 and 6 were already identifying as pansexual and bisexual. It doesn't take long for this evil ideology to affect our children's minds. And of course there are other concerning issues in the school district as well. But our children's mental health is the most important...

29. After his re-election on October 20, 2018, Trustee Neufeld posted a thank you to his supporters on Facebook on October 22, 2018, which also included discriminatory statements, including, "Is heterosexual marriage no longer the norm? If not, what will replace it? Hopefully not the unscientific ideology of non-binary gender". In addition, Trustee Neufeld included a message to "persons who currently identify as Lesbian, Gay, Transgender, Queer, Two Spirited or whatever" and stated that these individuals have nothing to fear from him. He then went on to state:

...Contrary to what you have been told to believe; We actually love all students no matter their sense of self identity and we care about you. But Love must be tempered with Truth. Be patient! You will mostly likely grow out of your feelings of confusion and angst. They are fleeting and temporary. Please slow down. Don't let others label you when you are so young...

30. Also in October 2018 after his election, Trustee Neufeld made further discriminatory statements regarding transgender individuals. He emailed The Valley Voice News stating that transgender individuals had committed election fraud. The online site reported that Trustee Neufeld suggested "pro-Sogi transgender persons may have voted twice", and had emailed "Transgender people often have two

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<sup>5</sup> See also paras. 21, 25, 27, 31, 37, 41, and 44 of the respondent's Amended Notice of Civil Claim.

sets of identification: one for the sex they were assigned at birth, and another new set when they legally changed their name and gender”.<sup>6</sup>

31. On or around November 3, 2018 Trustee Neufeld posted a link to his GoFundMe page on his Facebook page and stated:

Glen Hansman has refused to apologise. He stands by his defamatory remarks. The BCTF is not used to losing. But I am determined! This time, Mr. Hansman, you are going DOWN!

32. Counsel for the BCTF wrote to Trustee Neufeld’s counsel regarding the post and requested that the post be removed:

This post is very concerning to the BCTF as it appears to be a threat directed at Mr. Hansman. I will be raising this at the HRT mediation, but I wanted to bring this to your attention right away given the seriousness with which the BCTF views this post. Even if Trustee Neufeld intended his threat to be with respect to the legal proceeding, it is likely his followers may perceive it as condoning and encouraging a physical attack on Mr. Hansman.<sup>7</sup>

33. Trustee Neufeld’s counsel replied indicating that Trustee Neufeld would not be removing the post as in their view, “it does not appear that, on any reasonable construction, the facebook post could conceivably be interpreted as a threat of physical harm, or as condoning or encouraging any physical attack by Mr. Neufeld”.<sup>8</sup>

34. On November 17, 2018 Trustee Neufeld posted a story on Facebook asking his followers to donate to the Fraser Valley Autism Society for Trustee Neufeld’s birthday. In this post, Trustee Neufeld stated that “a large proportion of kids who present as gender Dysphoric are actually on the Autism spectrum”. He went on to state that if children on the autism spectrum and other “disturbed and mentally ill children” were to learn about “this new non-binary gender ideology, I fear there will be a dramatic increase of children clamouring for social transition, puberty blockers and a lifetime of taking hormones. They will become sterile, have brittle bones and when they are 18, even want to chop off perfectly good body parts! And public schools are “supporting” this?”

35. On November 20, 2018 Trustee Neufeld posted a message on Facebook similar to his November 17, 2018 Facebook story and reiterated his discriminatory statement that transgender students “are mostly Autistic, not genuinely gender dysphoric!”

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<sup>6</sup> “What Happened to 80 Votes?”, The Valley Voice (26 October 2018) online: <http://thevalleyvoice.ca/Voice%20Stories/October%202018/chilliwack-school-board-candidate-kaethe-jones-may-ask-for-elections-recount-audit-2018.htm>

<sup>7</sup> Email from R Trask to S Gersbach and D Bell, November 3, 2018.

<sup>8</sup> Email from S Gersbach to R Trask, November 5, 2018.



36. On December 2, 2018 Trustee Neufeld shared a post by Laura-Lynn Tyler Thompson on his Facebook page that called SOGI 1-2-3 resources “transgender indoctrination”.
37. On December 9, 2018 Trustee Neufeld wrote the following discriminatory post on his Facebook page:
- The elites will destroy all gay kids. They are culling them from the gene pool. Make no mistake about it. The trans agenda is eugenics. They are not on the side of LGBTQ+ Don’t ever think they are. Snakes are everywhere. More division and destruction of humanity.
38. Trustee Neufeld subsequently changed his Facebook settings so that his Facebook page was private. He ~~recently~~ later made his Facebook public again.
39. On February 7, 2019, Trustee Neufeld was scheduled to speak at a “Rally-UP in support of Barry Neufeld” at the Evergreen Hall in Chilliwack organised by Culture Guard. Trustee Neufeld cancelled his participation on the day of the event, and the event continued in his absence. Prior to Trustee Neufeld’s scheduled appearance at this event, and during the relevant time period of this Complaint, Culture Guard has published numerous discriminatory pamphlets targeting LGBTQ individuals.
40. Trustee Neufeld has participated in protests against SOGI 1 2 3 at the Chilliwack School District offices, which included signs suggesting supporting transgender students and using SOGI 1 2 3 resources amounts to sexual harassment of young girls by allowing boys in the girls’ changerooms.
41. Trustee Neufeld has continued to make and publish numerous other discriminatory statements on public forums, such as Facebook and YouTube, including statements to the effect that:
- a. “vulnerable children are being exploited by Adult transgender activists”;<sup>9</sup>
  - b. transgender people “pretend that they have successfully changed their gender”, deceive people “as to who she/he truly is”, and transgender people or those “suspected” of being transgender should not be trusted;<sup>10</sup>
  - c. the “gender fluid ideology now being forced on school children is the most organized and sinister attack on nuclear family values in History”, which is “deliberately designed to alienate children

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<sup>9</sup> Barry Neufeld, (March 11, 2020) posted on Facebook.

<sup>10</sup> Barry Neufeld, (May 9, 2020) posted on Facebook. See also “Chilliwack school trustee apologizes again for social media posts”, Chilliwack Progress (June 18, 2020) online: <https://www.theprogress.com/news/chilliwack-school-trustee-apologizes-again-for-social-media-posts/>

from their parents” and “confusing troubled and traumatized children causing them to think they might be ‘trans’”;<sup>11</sup>

- d. parents should remove their children from public schools due to the number of transgender students in public schools or because students are more likely to identify as transgender if they attend public schools;<sup>12</sup>
- e. there is a connection between pedophiles grooming children for abuse and “confusing them about their gender identity”;<sup>13</sup>
- f. SOGI 1-2-3 “grooms” children for child predators, “kids don’t come up with the idea of transitioning, it is their parents... I liken this to child abuse” and there is “no such person as a transgender, there is just men and women, male and female”;<sup>14</sup>
- g. gender transition surgeries are “horrible practices that results when the physicians ignore God”;<sup>15</sup>
- h. “if a child comes home and starts using their preferred gender pronouns, a parent should know that that child has already been confused and manipulated into questioning their true identity”;<sup>16</sup>
- i. “Gender ideology... is diabolical”;<sup>17</sup>
- j. “Gender ideology has all the characteristics of a strange, new twisted religion” comparable to residential schools;<sup>18</sup>
- k. transgender children “are encouraged to manipulate their parents with threats and even attempts at suicide”, transgender people are not “authentic”, gender affirming surgery is “barbarous” and will lead to suicide;<sup>19</sup>
- l. doctors and others who support transgender people should be arrested;<sup>20</sup>

42. Trustee Neufeld was not re-elected during the School Board election in October 2022 and is not currently a trustee for the Board.

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<sup>11</sup> Barry Neufeld Newsletter to Coalition of Concerned Canadians (July 24, 2020).

<sup>12</sup> Barry Neufeld, (March 3, 2021) posted on Facebook.

<sup>13</sup> Barry Neufeld, (June 30, 2021) posted on Facebook.

<sup>14</sup> Barry Neufeld (April 4, 2022) video on YouTube.

<sup>15</sup> Barry Neufeld, (May 5, 2022) posted on Facebook.

<sup>16</sup> Barry Neufeld and Rebel News (May 11, 2022) video.

<sup>17</sup> Barry Neufeld, (May 16, 2022) posted on Facebook.

<sup>18</sup> Barry Neufeld, (May 17, 2022) posted on Facebook.

<sup>19</sup> Barry Neufeld, (June 12, 2022) posted on Facebook.

<sup>20</sup> Barry Neufeld, (June 16, 2022) posted on Facebook.

43. The CTA has notified its members of the ~~complaint~~ Complaint. An announcement regarding the union's intention to file a complaint was made at the CTA general meeting on January 16, 2018. Members were also advised by email on January 29, 2018 of the union's intention to file the ~~complaint~~ Complaint and of members' right to opt out of the ~~complaint~~ Complaint. The CTA sent a further update by email to its members in November 2018. Since that time, the CTA has continued to update its members and The CTA will continue to keep members informed of the progress of the ~~complaint~~ Complaint through its regular general meetings and email communication to members.

### **Facts: Retaliation**

44. ~~On October 12, 2018, Trustee Neufeld filed a notice of civil claim in the BC Supreme Court alleging that BCTF President Glen Hansman had defamed him. In January 2019, Trustee Neufeld filed an amended notice of civil claim. The defamation claim is based on the filing of the human rights Complaint and statements made by the BCTF President with respect to the issues raised in the Complaint.~~

45. ~~On or around November 3, 2018 Trustee Neufeld posted a link to his GoFundMe page on his Facebook page and stated:~~

~~Glen Hansman has refused to apologise. He stands by his defamatory remarks. The BCTF is not used to losing. But I am determined! This time, Mr. Hansman, you are going DOWN!~~

46. ~~Counsel for the BCTF wrote to Trustee Neufeld's counsel regarding the post and requested that the post be removed:~~

~~This post is very concerning to the BCTF as it appears to be a threat directed at Mr. Hansman. I will be raising this at the HRT mediation, but I wanted to bring this to your attention right away given the seriousness with which the BCTF views this post. Even if Trustee Neufeld intended his threat to be with respect to the legal proceeding, it is likely his followers may perceive it as condoning and encouraging a physical attack on Mr. Hansman.<sup>21</sup>~~

47. ~~Trustee Neufeld's counsel replied indicating that Trustee Neufeld would not be removing the post as in their view, "it does not appear that, on any reasonable construction, the facebook post could conceivably be interpreted as a threat of physical harm, or as condoning or encouraging any physical attack by Mr. Neufeld".<sup>22</sup>~~

### **Submission**

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<sup>21</sup> Email from R Trask to S Gersbach and D Bell, November 3, 2018.

<sup>22</sup> Email from S Gersbach to R Trask, November 5, 2018.

## Legal Basis

### *Discrimination Regarding Employment*

48. Section 13 of the *Code* provides:

**13** (1) A person must not

(a) refuse to employ or refuse to continue to employ a person, or

(b) discriminate against a person regarding employment or any term or condition of employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

49. Section 13 prohibits discrimination against employees “whenever that discrimination has a sufficient nexus with the employment context”.<sup>23</sup> As recently set out by the Supreme Court of Canada majority decision in *Schrenk*:

... In determining whether discriminatory conduct has such a sufficient nexus, the Tribunal must conduct a *contextual* analysis that considers all relevant circumstances. Factors which may inform this analysis include: (1) whether the respondent was integral to the complainant's workplace; (2) whether the impugned conduct occurred in the complainant's workplace; and (3) whether the complainant's work performance or work environment was negatively affected. These factors are not exhaustive, and their relative importance will depend on the circumstances...<sup>24</sup>

50. This analysis includes protecting workers from a discriminatory work environment. As explained by Justice Abella in her concurring decision in *Schrenk*, cases involving discrimination in the workplace are also informed by a focus on impact and, “The key is whether that harassment has ‘a determinantal effect on the complainant’s work environment’”.<sup>25</sup> It would be inconsistent with this approach to conclude that a worker would be precluded from complaining about a racist work environment because there were no members of the targeted minority at the worksite.

51. Here, Trustee Neufeld made discriminatory statements about transgender individuals that negatively effected teachers’ work environment, including by among other things, calling teachers who support transgender students “child abusers” and referring to teachers work of creating an inclusive

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<sup>23</sup> *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 [*Schrenk*] at para 67.

<sup>24</sup> *Schrenk* at para 67.

<sup>25</sup> *Schrenk* at para 89.

learning environment and teaching about LGBTQ families as an evil ideology<sup>26</sup>. These statements and publications had and continue to have a discriminatory effect on the work environment for all teachers and a particularly discriminatory effect on teachers who are transgender, LGBTQ, and or who seek to fulfil their statutory duty and obligation under the Code to provide an inclusive learning environment for students who identify as members of the LGBTQ community. Calling CTA members “child abusers” undermines and invalidates their sense of dignity and self-worth and creates a discriminatory work environment.

52. As noted above, Trustee Neufeld compares teachers’ work creating an inclusive school environment for transgender students as leading towards removal of children from their communities as was done to Indigenous children through the residential school system. The residential school system was a form of cultural genocide. Comparing teachers’ work supporting transgender students to the cultural genocide of the residential school system undermines and invalidates teachers’ dignity and self-worth and creates a discriminatory work environment.

53. Trustee Neufeld undermined teachers’ dignity and self-worth by discounting their lived experiences, and those of family members and students who they support, by stating that “feelings of confusion and angst” regarding gender identity and sexual orientation “are fleeting and temporary”.<sup>27</sup> Similarly, describing transgender individuals as confused and actually experiencing un-diagnosed autism<sup>28</sup> also undermines teachers’ dignity and self-worth.

54. LGBTQ teachers experienced individual adverse effects with respect to their employment as a result of Trustee Neufeld’s statements and publications. In addition, regardless of their sexual orientation, teachers experienced individual adverse effects including undermining of their dignity and self-worth, concern and anxiety for their LGBTQ students, LGBTQ colleagues, family members, fear regarding their ability to complete their work and support their students in a non-discriminatory environment, and fear regarding their ability to voice support for the LGBTQ community within schools. These impacts are an affront to these teachers’ dignity.

55. The discrimination has a sufficient nexus to the employment context and undermine the purposes of the *Code*. The purposes of the *Code*, including to promote and foster human dignity and equality, to prevent discrimination prohibited by the *Code*, and to identify and eliminate persistent patterns of

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<sup>26</sup>Barry Neufeld, (19 October 2018) posted on Facebook.

<sup>27</sup>Barry Neufeld, (22 October 2018) posted on Facebook.

<sup>28</sup>Barry Neufeld, (17 November 2018) posted Facebook.

inequality associated with discrimination, are furthered by broad interpretation and do not require that a person complaining of discrimination identify as a member the protected group.<sup>29</sup>

56. As noted above, teachers are required by the *Code*, *School Act* and associated regulations, and *Teachers' Act* and associated regulations to deliver an inclusive curriculum for all students in a safe school environment. This includes supporting LGBTQ students and working to prevent and address bullying of students. Trustee Neufeld's conduct was discriminatory towards LGBTQ teachers, ~~but also towards~~ and all teachers based on their association with LGBTQ youth and support of LGBTQ youth. Trustee Neufeld's conduct is plainly discriminatory, and the negative consequences of the discrimination extend to teachers who want to be, and are statutorily required to be, supportive of transgender children.

57. Trustee Neufeld's discriminatory conduct is ongoing and constitutes a continuing contravention of the Code. However, the CTA advances this Complaint to address conduct occurring up until the end of Trustee Neufeld's term as Trustee.

### ***Discriminatory Statements and Publications***

58. Section 7 of the *Code* provides:

**7** (1) A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or

(b) is likely to expose a person or a group or class of persons to hatred or contempt

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or that group or class of persons.

(2) Subsection (1) does not apply to a private communication, a communication intended to be private or a communication related to an activity otherwise permitted by this Code.

59. In *Whatcott*, the Supreme Court of Canada set out three main prescriptions for courts and tribunals to apply a workable approach to interpreting the word hatred. First, hate speech provisions should be applied objectively. The question to be considered is "whether a reasonable person, aware of the context and circumstances surrounding the expression, would view it as exposing the protected group to

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<sup>29</sup> *North Vancouver School District No. 44 v. Jubran*, [2005] B.C.J. No. 733 [*Jabran*] at paras 36 & 55.

hatred”.<sup>30</sup> Second, “hatred” or “hatred and contempt” applies to extreme manifestations of detestation and vilification. It does not include offensive expression that does not incite the level of abhorrence that risks causing discrimination or other harmful effects.<sup>31</sup> Third, tribunals must focus their analysis on the effect of the expression.<sup>32</sup>

60. In summary, the Court explained:

...where the term “hatred” is used in the context of a prohibition of expression in human rights legislation, it should be applied objectively to determine whether a reasonable person, aware of the context and circumstances, would view the expression as likely to expose a person or persons to detestation and vilification on the basis of a prohibited ground of discrimination.<sup>33</sup>

61. When viewed objectively, taking account of the context and circumstances, Trustee Neufeld’s statements are likely to expose transgender individuals to hatred.

62. The context within which the statements were made and published includes a history of discrimination against transgender people, including the recent enumeration of gender identity and expression in the *Code*, and Trustee Neufeld’s position in the community as a school trustee.

63. Trustee Neufeld made repeated statements exposing transgender individuals, their families, and teachers who provide an inclusive classroom supportive of transgender students, to hatred. Even after he purported to offer an apology, Trustee Neufeld made further hateful statements.

64. The effect of the expression is to expose transgender people to hatred. The ensuing comments on Trustee Neufeld’s Facebook page after his initial post and the November 21, 2017 Culture Guard event are specific evidence of Trustee Neufeld inciting hatred.

65. Trustee Neufeld has referred to transgender people as being part of a “biologically absurd theory”. Trustee Neufeld has referred to supporting transgender children as “child abuse”, first in a Facebook post and then again at a speech he made at November 21, 2017 Culture Guard event. Trustee Neufeld suggested that LGBTQ students should be considered children in need of protection by the Ministry of Children and Family Development.<sup>34</sup> A child in need of protection is defined in the *Child, Family and Community Services Act* as a child who had been physically harmed, sexually abused, emotionally

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<sup>30</sup> *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467 [*Whatcott*] at para 56.

<sup>31</sup> *Whatcott* at para 57.

<sup>32</sup> *Whatcott* at para 58.

<sup>33</sup> *Whatcott* at para 59.

<sup>34</sup> Chilliwack School District Board Meeting (13 February 2018), online: <https://www.youtube.com/watch?v=kHSEd5DpIYE> at 43:20.

harmful, abandoned or neglected by the child's parent or by another person and the child's parent is unable or unwilling to protect the child.<sup>35</sup>

66. As noted above, Trustee Neufeld also equated teachers' work creating an inclusive school environment for transgender students with the harm that was done to Indigenous children through the residential school system.<sup>36</sup>

67. Trustee Neufeld referred to those who support transgender students as being part of the "trans agenda" which he called "eugenics"<sup>37</sup> teaching an "evil ideology".<sup>38</sup> Although Trustee Neufeld claims he does not "hate" transgender children, his statements subject transgender people to hatred. Trustee Neufeld's statements paint transgender people as ill, delusional and suggests that there is a transgender agenda that will harm children and lead to the "destruction of humanity".<sup>39</sup>

68. Trustee Neufeld's issuance of statements indicating discrimination or exposing individuals to hatred is ongoing and constitutes a continuing contravention of the Code. However, the CTA advances this Complaint to address conduct occurring up until the end of Trustee Neufeld's term as Trustee.

### **Retaliation**

69. Section 43 of the Code is commonly known as the protection from retaliation provision. Section 43 stipulates:

A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, might complain or be named in a complaint, gives evidence, might give evidence or otherwise assists or might assist in a complaint or other proceeding under this Code.<sup>40</sup>

70. The Tribunal has found that there are four elements to a complaint of retaliation:

- 1) A Complaint was filed with the Tribunal;
- 2) the Respondent was aware of the Complaint;
- 3) the Respondent engaged in or threatened to engage in retaliatory conduct against the Complainants;

<sup>35</sup> Child, Family and Community Services Act, [RSBC] c. 46, s. 13.

<sup>36</sup> Chilliwack School District Board Meeting (13 February 2018), online: <https://www.youtube.com/watch?v=kHSEd5DpIYE> at 2:31:03 and Barry Neufeld (18 December 2017) posted on Facebook.

<sup>37</sup> Barry Neufeld (9 December 2018) posted on Facebook.

<sup>38</sup> Barry Neufeld (19 October 2018) posted on Facebook.

<sup>39</sup> Barry Neufeld (9 December 2018) posted on Facebook.

<sup>40</sup> Human Rights Code [RSBC 1996] c. 210, s. 43.



- 4) the Respondent intended to engage in retaliatory conduct or can reasonably have been perceived to have engaged in that conduct, with reasonable perception being assessed from the point of view of a reasonable complainant.<sup>41</sup>

71. To make out a complaint under s. 43 of the Code, one must establish:

- a. The respondent was aware that a complaint had been or might be filed and that the individual alleging retaliation might give evidence or otherwise assist in the complaint;
- b. The respondent engaged in or threatened to engage in the type of conduct described in s. 43; and
- c. There is sufficient connection between the impugned conduct and the previous complaint. Such a connection may be established by proving that the respondent intended to retaliate or can be inferred if the respondent can reasonably have been perceived to have engaged in retaliatory conduct.<sup>42</sup>

72. The Code is clear that retaliation can extend to those who might give evidence or otherwise assist in a complaint.

73. The elements required to demonstrate retaliation are present in this case.

## **Remedy Sought**

74. ~~The Complainant seeks a declaratory order that the Respondent has breached the Code; and~~

75. ~~An order that the Respondent cease contravening the Code, and refrain from committing the same or similar contraventions or encouraging or assisting others to make similar contraventions; and~~

76. ~~The Complainant seeks an order for payment to a non-profit organisation that advocates for LGBTQ youth to engage in proactive work to address discrimination against LGBTQ youth in order to ameliorate the effects of the discrimination; and~~

77. ~~Any other remedies the Tribunal deems appropriate.~~

78. The Complainant seeks the following relief:

- a. a declaratory order that the Respondent has breached the Code;

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<sup>41</sup> Beckett and Kuan v. Owners Strata Plan NW 2603, 2016 BCHRT 27; See also Chiang v. British Columbia (Human Rights Tribunal), 2014 BCSC 1859 at para 14, citing Becker v. Cariboo Chevrolet Pontiac Buick GMC Ltd., 2006 BCSC 43 at paras. 52 & 54, Talkkariat paras. 42-49, and Gichuru v. Law Society of BC, 2010 BCCA 543 at para. 41.

<sup>42</sup> See Gichuru v. Pallai, 2018 BCCA 78 at para 46 and The Employee v. The Company, 2020 BCHRT 178 at para 23

- b. an order that the Respondent cease contravening the Code, and refrain from committing the same or similar contraventions or encouraging or assisting others to make similar contraventions;
- c. an order for payment by the Respondent to a non-profit organisation that advocates for LGBTQ youth to engage in proactive work to address discrimination against LGBTQ youth in order to ameliorate the effects of the discrimination; and
- d. any other remedies the Tribunal deems appropriate.

Respectfully submitted on behalf of the BCTF/CTA,



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