

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

BETWEEN:

GLEN HANSMAN

Applicant
(Respondent)

- and -

BARRY NEUFELD

Respondent
(Appellant)

**APPLICANT'S REPLY TO THE RESPONSE TO THE APPLICATION
FOR LEAVE TO APPEAL**

(Pursuant to Rule 28 of the *Rules of the Supreme Court of Canada*)

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REPLY

1. The response to the application for leave to appeal contains assertions that are not supported by the record. Below we briefly address some of those incorrect assertions.

2. At paragraph 3, Trustee Neufeld says that Mr. Hansman “sought to destroy a critic and shut down public debate on a matter of public interest.” There is no evidence to support this assertion and the findings of the Chambers judge, Justice Ross, are to the contrary:

[141] . . . Mr. Hansman’s affidavit sets out the background and context of his statements. His affidavit makes it clear that he did honestly hold the views that he expressed in the interviews. Hence, on the evidence before me, there is no prospect of a finding that the defendant made the statements, either knowing them to be false or with reckless indifference whether they were true or false. It is also clear from his affidavit that his purpose in making the statements was to promote the use of the SOGI 123 materials and schools that were safe and inclusionary for transgender people. . . .

3. At paragraph 4, Trustee Neufeld says “There is no evidence that Mr. Hansman had an honest belief in the defamatory imputations for which he is being sued.” As the above passage indicates, the Chambers judge made a finding based on his review of the affidavit material that Mr. Hansman “did honestly hold the views that he expressed in the interviews.” The Court of Appeal found that Mr. Hansman had not “expressly stated” that he honestly held the views expressed,¹ but the Chambers judge’s finding is amply supported by a review of Mr. Hansman’s affidavit read in its entirety.²

4. At paragraph 7, Trustee Neufeld submits that “As to any power imbalance between the parties, it clearly favours Mr. Hansman”. There is no finding or evidence that there is any such “power imbalance” in this case. Trustee Neufeld is an elected official who ran for office with a slate of other anti-SOGI candidates. He exercises public duties under the *School Act*.³ As detailed in the applicant’s memorandum of argument, his propensity to make statements about the LGBTQ community has continued unabated by the comments of Mr. Hansman and other people in the education field.

¹ Court of Appeal Reasons, at para. 43 (ALB, Tab B3).

² Mr. Hansman’s affidavit (“Hansman Affidavit”) is found at Tab D3 of the Applicant’s Leave Book.

³ See [School Act, R.S.B.C. 1996, c. 41, Part 6 – Boards of Education](#), Division 2 – Powers and Duties.

5. At paragraph 9, Trustee Neufeld submits that “All of the statements attributed to [Mr. Hansman] in all of the publications as pleaded have been admitted by Mr. Hansman.” To be clear, while Mr. Hansman has admitted making the statements plead, not all of the statements are in relation to Trustee Neufeld. As explained in the applicant’s memorandum of argument,⁴ Mr. Hansman did not refer to Neufeld as racist or anti-immigrant. This comment was made in relation to a different candidate for school trustee who had made negative comments about refugees and immigrants.

6. Furthermore, contrary to paragraph 11 of the response, Mr. Hansman did not state on January 1, 2018 that Trustee Neufeld “promoted hatred.” Rather, on January 17, 2018, Mr. Hansman made “comments about the challenges professional educators face from those who promote hatred.” Here Mr. Hansman “was not specifically referring to Trustee Neufeld, but more generally to those who attack efforts to ensure that LGBTQ students can attend safe and inclusive schools.”⁵ Mr. Hansman’s statements concerning hate speech and Trustee Neufeld were made after the BCTF and the Chilliwack Teachers’ Association filed a human rights complaint against Trustee Neufeld alleging that he made statements “likely to expose a person or a group or class of persons to hatred or contempt.” Mr. Hansman’s statements were made in that context.⁶

7. Contrary to paragraph 17 of the response, Mr. Hansman did not state that Trustee Neufeld wished to exclude LGBTQ individuals from public schools.

8. At paragraph 21 of the response, Trustee Neufeld submits it “is the ‘public interest’, not the particular interest of either party, which governs the weighing exercise under section 4(2)(b) of the *PPPA*.”⁷ However, as noted in the applicant’s memorandum of argument, the public interest in allowing the proceeding to continue requires an assessment of whether the plaintiff has suffered reputational or economic harm.⁸ This is supported not only by the text of the statute but by statements of the Attorney General of British Columbia in the legislature:

⁴ Applicant’s Memorandum of Argument, at para. 49.

⁵ Hansman Affidavit, at paras. 37-38 (ALB, Tab D3, p. 141).

⁶ See Applicant’s Memorandum of Argument, at paras. 29, 31.

⁷ *Protection of Public Participation Act*, S.B.C. 2019, c. 3 (“*PPPA*”).

⁸ Applicant’s Memorandum of Argument, at para. 52.

. . . the act would provide for a legal basis and expedited process by which, at an early stage in the proceedings, a court would be able to determine whether a lawsuit arises out of expression on a matter of public interest and, if so, to weigh whether the likely harm to a plaintiff is serious enough that the public interest in allowing the lawsuit to continue would outweigh the public interest in protecting the expression that gave rise to the lawsuit. In so doing, the act would improve access to justice, would balance the protection of freedom of expression with the protection of reputation and economic interests.⁹ [Emphasis added.]

9. This supports Mr. Hansman’s position that the balancing of interests under s. 4(2)(b) does not involve consideration of the “chilling effect” of the defendant’s statements upon the plaintiff’s expressive activity.

10. Contrary to Trustee Neufeld’s submission, Mr. Hansman does not seek to have “this Court entertain a debate on the merits of the SOGI-123 program.”¹⁰ The two issues under s. 4(2)(b) of the *PPPA* identified in the leave application do not require the Court to pronounce on the merits of SOGI educational materials. If the Court of Appeal was correct that a court should consider the potential chilling effect of a defendant’s public statements on the expressive activity of the person bringing an action in defamation (issue one) then this Court will have to consider how courts should weigh the competing claims of plaintiffs and defendants for protection of their expressive activities under the *PPPA* (issue two).

11. The second issue will require the Court to consider the significance of the fact that Mr. Hansman’s statements were aimed at protecting and promoting the equality of members of a vulnerable group in Canadian society. Contrary to Trustee Neufeld’s submission at paragraph 28, it is hardly “collateral” to the proper functioning of the *PPPA* that consideration is given to the fact that transgender and non-binary people are among the most vulnerable groups in Canadian society. As the Chambers judge found, Mr. Hansman’s comments, made in response to Trustee Neufeld’s statements, were intended to make schools safe and inclusionary for transgender people.¹¹ The public interest in protecting that expression is high.

⁹ [Hansard, No. 197, February 13, 2019](#), p. 6974.

¹⁰ Respondent’s Memorandum of Argument, at para. 2.

¹¹ BCSC Reasons, at para. 141 (ALB, Tab B1).

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

A handwritten signature in cursive script that reads "Robyn Trask".

Robyn Trask
Michael Sobkin
Counsel for the Applicant

Dated at Vancouver, British Columbia this 28th day of October, 2021.