

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)

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**RESPONSE TO APPLICATION FOR LEAVE TO APPEAL**  
(Pursuant to Rule 27 of the *Rules of the Supreme Court of Canada*)

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## MEMORANDUM OF ARGUMENT

### I OVERVIEW AND STATEMENT OF FACTS

#### A. Overview

1. In October, 2017, an elected school board trustee (the respondent, Mr. Neufeld) spoke out about a program in the schools called “SOGI-123”, describing it as the “*latest fad; Gender theory*”. He regarded it as harmful to children, calling it “biologically absurd” and referred to certain activists as “*radical cultural nihilists*”. These comments offended the president of the BC Teachers Federation (the applicant, Mr. Hansman) whose widely published and protracted defamation of Mr. Neufeld is the subject of this action.
2. Mr. Hansman has already avoided the initial trial scheduled by way of his *PPPA* application and seeks to avoid the second trial date by, in effect, having this Court entertain a debate on the merits of the SOGI-123 program. However, he has pointed out no serious legal issue, let alone one which warrants the attention of this Court.
3. The *Protection of Public Participation Act*, S.B.C. 2019, c.3 [“*PPPA*”] was intended to protect freedom of debate. The entire scheme gets turned on its head if it provides cover for the president of a powerful public sector union whose protracted defamation of Mr. Neufeld through the media sought to destroy a critic and shut down public debate on a matter of public interest.
4. This judgment below simply permits Mr. Neufeld to have his day in court. It does not in any way detract from Mr. Hansman’s ability to advance whatever “social justice” arguments he asserts once at trial. In fact, any chance for effective scrutiny of such areas requires a deep dive into the evidence which is impossible on this application.
5. In assessing the public interest under *PPPA* s. 4(2)(b), the Court of Appeal’s reasoning is entirely consistent with the recent judgments of this Court.
6. Furthermore, the issues raised on this application are somewhat academic and are simply not germane to the disposition of the application below. This is because the chambers

judgment was egregiously flawed in a number of fundamental ways apart from *PPPA* section 4(2)(b).

**B. Statement of Facts**

7. Prior to the present dispute, there was no history of threatened or actual legal proceedings between the parties. As to any power imbalance between the parties, it clearly favours Mr. Hansman, the president of the BC Teachers Federation at all material times.

8. This libel claim is based 11 specific publications as pleaded by the following paragraphs in the Amended Notice of Civil Claim:

para. 14, Oct. 24/17 Vancouver Sun

para. 15, Oct. 24/17 Global News

para. 16, Oct. 24/17 Huffington Post

para. 20, Jan. 17/18 Fraser Valley News

para. 24, April 10/18 Star Vancouver

para. 25, April 12/18 CityNews 1130

para. 26, April 13/18 CBC Radio

para. 28, April 22/18 CityNews 1130

para. 29, Sept 16/18 CityNews 1130

para. 42, Oct. 19/18 Chilliwack Progress

para. 44, Oct. 22/18 CBC Radio<sup>1</sup>

9. All of the statements attributed to him in all of the publications as pleaded have been admitted by Mr. Hansman.<sup>2</sup>

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<sup>1</sup> Amended Notice of Civil Claim, p. 105 to p.126 of the Application for Leave to Appeal

<sup>2</sup> *Neufeld v Hansman*, 2021 BCCA 222 (CA Decision), para. 13

10. The Chamber's judge neglected to consider the details of any of these publications and it is not possible to ascertain from his judgment which ones he actually had a look at.<sup>3</sup>
11. The publications included saying that Mr. Neufeld "promoted hatred" (Jan. 1/18), "exposed [trans people] to hatred" (April 10/18), "tip toed quite far into hate speech" (April 12/18), made "hateful" public comments about trans people (April 13/18) and "continuing to spread hate about LGBTQ people" (Sept. 16/18). These are pleaded as imputations of criminal conduct.<sup>4</sup>
12. Mr. Neufeld pleaded that the publications conveyed various defamatory meanings, both expressly and inferentially.<sup>5</sup>
13. There is no evidence of public debate or debate by any school board in BC about Sexual Orientation and Gender Identity (SOGI) until Mr. Neufeld spoke out about it in October, 2017.<sup>6</sup>
14. This SLAPP application has already cost Mr. Neufeld his first trial date, which had been set for December, 2019. His second trial date in this matter is now set for July 25, 2022.<sup>7</sup>
15. Contrary to Mr. Hansman's submissions, there is no evidence that he had any legal or moral authority to commit libels on behalf of anybody but himself and "in defence of a vulnerable group in Canadian society".
16. There is no claim against Mr. Hansman relating to his views about LGBTQ, the BCTF's social justice agenda or about his personal beliefs. The claim is only about the proven publications as pleaded.<sup>8</sup>
17. There is no evidence that Mr. Hansman had an honest belief in the defamatory imputations for which he is being sued. For example, he did not depose to believing that Mr. Neufeld

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<sup>3</sup> CA Decision, paras 26, 31

<sup>4</sup> CA Decision, para. 13

<sup>5</sup> CA Decision, paras 41

<sup>6</sup> CA Decision, para. 10

<sup>7</sup> Notice of Trial, Tab 2 to this Response

<sup>8</sup> CA Decision, para. 62

hates LGBTQ people, seeks to exclude them from public schools and commits “hate speech”.

## II STATEMENT OF QUESTIONS IN ISSUE

18. Has the Court of Appeal judgment raised any issue which meets the test under section 40(1) of the *Supreme Court Act*?

## III STATEMENT OF ARGUMENT

19. Contrary to Mr. Hansman’s submissions, the Court of Appeal has raised no novel issues nor anything particularly contentious. Its judgment is entirely consistent with the recent judgments of this Court in *Pointes Protection*<sup>9</sup> and in *Platnick*<sup>10</sup>.
20. In reference to the weighing exercise under *PPPA* s. 4(2)(b), Mr. Hansman asserts: “The purpose of the *PPPA* is to protect the defendant’s expressive activity on matters of public interest, not the plaintiff’s.”<sup>11</sup>
21. With respect, there is simply no authority for this proposition. As the *PPPA* itself states, 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*.
22. As noted by the Court of Appeal, referring to this Court’s judgment in *Pointes*, the weighing exercise under *PPPA* s. 4(2)(b) “... requires the judge to assess the **public interest** in continuing the proceeding. It is thus not only the harm to the plaintiff that is being weighed, but the **public interest** in vindicating a potentially meritorious claim”.<sup>12</sup> [emphasis added]
23. At paragraph 64, the Court of Appeal quoted from this Court’s judgment in *Pointes* that the weighing exercise:

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<sup>9</sup> *1704604 Ontario Ltd. v. Pointes Protection*, 2020 SCC 22

<sup>10</sup> *Bent v. Platnick*, 2020 SCC 23

<sup>11</sup> Applicant’s Memorandum of Argument, para. 14

<sup>12</sup> CA Decision at para. 63

open-endedly engages with the overarching concern that this statute, and anti-SLAPP legislation generally, seek to address by assessing the public interest and public participation implications<sup>13</sup> [emphasis added]

24. Also at paragraph 64, referring to this Court's statements in *Pointes*, the Court of Appeal identified a number of factors that may be considered in the weighing exercise, including:

....the potential chilling effect on future expression either by a party or by others.<sup>14</sup> [emphasis added]

25. Applying these principles to the present facts, the Court of Appeal took note of

...the risk that people would withdraw or not engage in public debate for fear of being inveighed with negative labels and accusations of hate speech with no opportunity to protect their reputation.<sup>15</sup>

26. It is patently obvious that a solitary, politically incorrect school board trustee, seeking to vindicate his reputation, constitutes no threat to the freedom of debate enjoyed by the president of the powerful teachers' union. His sustained defamation through the media would, however, have that effect on critics such as Mr. Neufeld.

27. A long time before SLAPP laws existed, the public interest in protecting freedom of debate was a well recognised function of defamation law. For example, as then Chief Justice McLachlin stated in *Grant v. Torstar Corp.*:

[106] The public has a genuine stake in knowing about many matters, ranging from science and the arts to the environment, religion and morality. The democratic interest in such wide-ranging public debate must be reflected in the jurisprudence.<sup>16</sup>

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<sup>13</sup> CA Decision at para 63, quoting *Pointes* at para. 62

<sup>14</sup> CA Decision at para 64, quoting *Pointes* at para. 80

<sup>15</sup> CA Decision at para. 65

<sup>16</sup> *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 106



28. Mr. Hansman asserts that this Court should avail itself of this libel case in order to address such collateral matters as “... the plight of transgender and non-binary people in Canadian society”.<sup>17</sup>
29. Mr. Hansman appears to be asserting that, as a gay man who, without a scintela of evidence on the point, claims to be speaking for the entire LGBTQ community, he is equipped with a licence to libel critics and/or is somehow exempt from the law of defamation.
30. Regardless of Mr. Hansman’s strong beliefs and the antipathy he feels towards those with different opinions, this is a libel action. Courts are not debating clubs. As the Court of Appeal noted:

The action underlying this appeal arises out of significant philosophical differences about the use of the Ministry of Education’s SOGI 123 materials, but, as the chambers judge aptly observed, the application before him had nothing to do with the “correctness” of either party’s position on that issue.<sup>18</sup> [emphasis added]

31. Mr. Hansman urges this Court to make the same mistake that the Chambers judge did, conflating the expression actually at issue with a broader debate. As the Court of Appeal noted:

...the judge failed to distinguish between the subject matter of public interest and the actual expression complained of.<sup>19</sup>

32. Mr. Hansman’s sexual orientation and passionately held ideological perspectives may explain his anger with Mr. Neufeld but he is only being sued on the basis of the specific publications which have been pleaded. As the Court of Appeal noted:

Mr. Neufeld did not complain about Mr. Hansman’s statements concerning the need for inclusive and safe schools. Rather, Mr.

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<sup>17</sup> Applicant’s Memorandum of Argument at para. 14

<sup>18</sup> CA Decision at para. 2

<sup>19</sup> CA Decision at para. 61

Neufeld identified particular statements referring to him as bigoted, transphobic, anti-immigrant, racist, misogynistic, and hateful....<sup>20</sup>

33. There is no suggestion that the actions of a solitary school board trustee fighting back against protracted and egregious libels in this matter could in any way affect Mr. Hansman's freedom to participate in public debate. It is Mr. Neufeld's freedom of debate which is at issue in this case.
34. The Court of Appeal recognized that the purpose of the *PPPA* was defeated if, as the Chambers judge effectively told the public, libel intended to vilify critics and shut down debate will be protected by the courts.
35. The Court of Appeal has flat rejected that disturbing proposition on the basis of well recognised principles of defamation law and in accordance with the purpose of anti-SLAPP legislation as affirmed by this Court in *Pointes Protection* and in *Platnick*.

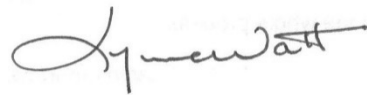
#### **IV SUBMISSION ON COSTS**

36. The Respondent requests his costs of responding to this leave application.

#### **V ORDER SOUGHT**

37. The Respondent submits that the Application for Leave to Appeal ought to be dismissed, with costs to the Respondent.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, Dated at the City of West Vancouver, Province of British Columbia this 18th day of October, 2021.



for:

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**PAUL E. JAFFE**  
Counsel for the Respondent

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<sup>20</sup> CA Decision at para. 62

**PART VI – TABLE OF AUTHORITIES & STATUTORY PROVISIONS**

<b>Case Law:</b>	<b>Paragraph References</b>
<i>1704604 Ontario Ltd. v. Pointes Protection</i> , <a href="#">2020 SCC 22</a>	19
<i>Bent v. Platnick</i> , <a href="#">2020 SCC 23</a>	19
<i>Grant v. Torstar Corp.</i> , <a href="#">2009 SCC 61</a>	27
<b>Statutes, Regulations, Legislation:</b>	
<i>Protection of Public Participation Act</i> , S.B.C. 2019, c.3, <a href="#">s. 4(2)(b)</a>	3, 5, 6, 20, 21, 22

08-Jul-21

REGISTRY  
Rule 12-1 (2)

NO. S35152  
CHILLIWACK REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BARRY NEUFELD

PLAINTIFF

AND:

GLEN HANSMAN

DEFENDANT

NOTICE OF TRIAL

Filed by: The Plaintiff

TAKE NOTICE that the trial of this proceeding has been set down at the following place, date and time:

City: Chilliwack, B.C	
Address of Courthouse: 46085 Yale Road, Chilliwack, BC. V2P 2L8	
Date: 07/25/2022	
Time: 10 am.	

Digitally signed by  
Martin, Leslie

.....  
Registrar

The place of trial set out above is:

the place of trial set out in the notice of civil claim.

[X] All parties of record in this action agree that not more than 9 days is a reasonable time for the hearing of all evidence and argument in this action. - 10 -

*Paul Jaffe*

Date: 06/07/2021

.....  
Signature of lawyer for filing party  
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## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### Part 1: THIS CLAIM INVOLVES THE FOLLOWING:

*[Check one box below for the case type that best describes this case.]*

- a motor vehicle accident
- a personal injury, other than one arising from a motor vehicle accident
- a dispute about real property (real estate)
- a dispute about personal property
- the lending of money
- the provision of goods or services or other general commercial matters
- an employment relationship
- a dispute about a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 2:

*[If an enactment is being relied on, specify. Do not list more than 3 enactments.]*