

SUPREME COURT
OF
BRITISH COLUMBIA

OCT 14 2026

CHILLIWACK
REGISTRY



Court File No. CHI-S-S-41392
Chilliwack Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the matter of the *Judicial Review Procedure Act*, RSBC 1996, c 241

BETWEEN:

BARRY NEUFELD

Petitioner

AND:

BRITISH COLUMBIA TEACHERS' FEDERATION obo CHILLIWACK TEACHERS'
ASSOCIATION

and

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL

Respondents

PETITIONER'S FACTUM

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PART I – OVERVIEW

1. No person or group likes experiencing their most cherished beliefs and ideals being disputed. It is a common and natural human tendency to desire such dispute to be disallowed. Historical examples abound. Tactics vary. Reactions of the proponents of “gender ideology” in this case are entirely typical. They equivocate. They set up straw men. They reason in a circle. They make up pejorative definitions of terminology, despite having the operative definition right in front of them. And, ultimately, they claim that a rejection of their beliefs is the same as a rejection of they themselves as individuals and therefore all such rejection must be silenced.

2. Barry Neufeld, the petitioner in the case at bar, defined “gender ideology”:

Gender ideology may be summarized as **the belief system that everybody has a gender identity; that this gender identity is not determined by the biological sex of a person; that this gender identity therefore may be one of any number of gender identities such as masculine, feminine, “queer”, non-binary, or even more than one gender identity at a time; that anyone may assume any gender identity simply by self-identifying; and that a person actually is whatever gender identity that person thinks, regardless of biological sex.** A believer of gender ideology therefore believes that if a person identifies as a man, that person actually is a man, regardless of whether the person is biologically male or female.

As is to be expected, believers of this ideology do not regard it as a belief system at all, but rather as an accurate and true account of the world. The teacher witnesses in this case repeatedly testified to this. However, the inescapable fact is that beliefs such as the belief that people have gender identities independent of biological sex, can change gender, or can hold more than one gender identity at a time are just that: beliefs. They are not hard, concrete, observable facts such as water is wet and fire is hot. In this way, gender ideology is no different than other belief systems, such as the belief system that people were created by a spirit-being (i.e. “God”), have a spirit themselves, and that spirit will live on in a spiritual place after the physical death of the body.

3. We need not wonder what Mr. Neufeld meant when he used the term “gender ideology”; he told us. We need not wonder whether accepting that a person identifies as transgender requires more of us than acceptance of any other person who believes in any other underlying proposition: it does not. We need not wonder if declining to believe in a thing is secretly a proxy for discriminating against a human being; it is not.

4. Yet the Tribunal accepted numerous logical fallacies into its framework, which became the lens through which it viewed the legal question it was tasked with answering:

[55] We can think of no better example for how transpeople are denied than this passage. Transpeople are, by definition, people “whose gender identity does not align with the sex assigned to them at birth”: *Hansman* at para. 12. If a person elects not to “believe” that gender identity is separate from sex assigned at birth, then they do not “believe” in transpeople. This is a form of existential denial: *Oger (No. 7)* at para. 61. It is not, as Mr. Neufeld argues, akin to religious beliefs. A person does not need to believe in Christianity to accept that another person is Christian. However, to accept that a person is transgender, one must accept that their gender identity is different than their sex assigned at birth.

[56] As this Tribunal has recognized, “the question of whether transgender people exist and are entitled to dignity in this province is as valuable to ongoing public debate as whether one race is superior to another”: *Oger (No. 7)* at para. 119. People can and do live beyond the binary. People can and do decide that they were assigned the incorrect gender at birth. Trans people are here, existing in schools and homes and workplaces. As Mr. Hansman characterized it during his testimony, no matter the attempted erasure by some facets of Canadian society, the existence of trans and gender diverse individuals is a fact: “They are there... There are students enrolled in British Columbia public schools who are transgender and non-binary. Likewise, school districts have employees that are transgender and non-binary.”

[57] Calling transness “gender ideology” allows anti-trans activists to hide behind a veneer of reasonableness. It allows them to say, as Mr. Neufeld did in his statements as well as at the hearing of this complaint, that they are not attacking human beings. They are simply opposing a set of ideas. But behind this insidious veneer is the proposition that transness is not real. Such phrasing can make it easier to ignore that trans people are human beings. Referring to “gender ideology” or “transgenderism” – “-ism” denoting a belief or ideology such as capitalism or communism – pushes the idea that trans people have an agenda rather than being just another demographic group. As this decision illustrates, such terms can create the conditions for discrimination and hatred to flourish.

5. That legal question—whether Mr. Neufeld discriminated and/or exposed persons to hatred—cannot be answered without first removing the fallacious reasoning infecting the Tribunal’s analysis.

6. This petition concerns the legal boundary between protected participation in a contentious public policy debate and discrimination prohibited by the *Human Rights Code*.¹ Mr. Neufeld does not contend that freedom of expression creates immunity for hate speech or workplace discrimination. He submits that the Tribunal crossed the statutory and constitutional boundary by treating disagreement with prescribed definitions of sex and gender as proof of discriminatory meaning, and by permitting that characterization to drive its conclusions under sections 7(1)(a), 7(1)(b), and 13.

7. The decision under review is *Chilliwack Teachers' Association v Neufeld (No. 10)*, 2026 BCHRT 49 (the “Merits Decision”). The Tribunal declared that Mr. Neufeld contravened sections 7(1)(a), 7(1)(b), and 13, ordered him to cease the contravention and refrain from committing the same or a similar contravention, and awarded monetary remedies.² The petition seeks to set aside the Merits Decision and dismiss the complaint, in whole or in part, or, alternatively, remit the matter to the Tribunal with the Court’s direction.³ The petition identifies the impugned statutory, constitutional, jurisdictional, factual, evidentiary, logical, procedural fairness, and bias errors.⁴

8. The central errors are:

- a. the Tribunal adopted an overbroad interpretation of section 7(1)(a) that failed to preserve a meaningful distinction between the expression of belief and opinion on matters of public debate and a publication that, properly interpreted in context, indicates discrimination or an intention to discriminate;
- b. the Tribunal’s application of section 7(1)(b) did not consistently maintain the stringent threshold of detestation and vilification required by *Saskatchewan (Human Rights Commission) v Whatcott*;⁵

¹ [RSBC 1996, c 210](#) [Code].

² Affidavit of Brianne Moore made August 20, 2026 (“Tribunal Record”), Ex. 40 (“Merits Decision”) at para 334.

³ Petition, Part 1 at paras 1-3.

⁴ Petition, Part 3 at paras 5, 7-31.

⁵ [2013 SCC 11](#) [Whatcott].

- c. the Tribunal extended section 13 beyond discrimination sufficiently connected to employment by treating a trustee's public political expression, and reactions to it, as discrimination "regarding employment" without maintaining the limiting function of the connection analysis in *British Columbia Human Rights Tribunal v Schrenk*;⁶
- d. the Tribunal's *Charter* values analysis did not demonstrate a proportionate balancing responsive to the political nature, subject matter, context, and remedial consequences of the expression; and
- e. the exclusion of the three proposed lay witnesses, considered together with the reasoning used to characterize Mr. Neufeld's position, denied him a meaningful opportunity to answer the contextual case advanced against him.

9. The British Columbia Teachers' Federation obo Chilliwack Teachers' Association ("Respondent(s)" or "Complainant(s)" or "Class" or "CTA") submits that several challenged conclusions are factual findings entitled to deference under section 59(2) of the *Administrative Tribunals Act*;⁷ that the section 7(2) and freedom of belief arguments were not raised before the Tribunal; and that parts of the petition improperly seek to reargue matters already decided.⁸ The Tribunal takes no position on the merits but identifies similar threshold objections.⁹ Those characterizations should be rejected where the petition challenges the legal tests adopted, the legal limits placed on statutory language, the adequacy of the required *Charter* balancing, and the fairness of the process. Those are proper subjects of judicial review.

10. Mr. Neufeld accepts that the Court must not retry the complaint or substitute its own view of the evidence. The Court must nevertheless intervene where the Tribunal applied an incorrect legal framework, failed to conduct the proportionate balancing required by law, or reached material conclusions that cannot be sustained under the applicable standard in section 59 of the *ATA*.

⁶ [2017 SCC 62](#) [*Schrenk*].

⁷ [SBC 2004, c 45](#) [*ATA*].

⁸ CTA Response at paras 139-40, 148-52, 169-70, 186, 190.

⁹ Tribunal Response at paras 48-9, 54-6.

PART II – FACTS AND PROCEDURAL HISTORY

A. The parties and complaint

11. Mr. Neufeld was an elected trustee of the Chilliwack Board of Education during the material period. The CTA is a local of the BCTF and represents teachers employed in School District No. 33. The complaint, filed in January 2018 and later narrowed, proceeded on behalf of CTA members identifying as gay, lesbian, bisexual, transgender and/or queer.¹⁰

12. The complaint concerned public statements made over several years in social media posts, speeches, interviews, and Board meetings. The statements arose principally from Mr. Neufeld's opposition to SOGI 123 and to the affirmation of transgender identities in public education. The Tribunal acknowledged that the complaint engaged freedom of expression under section 2(b) of the *Charter*.¹¹

B. The hearing and interim decisions

13. The merits hearing proceeded before a three-member panel over 13 hearing days. The CTA called six witnesses, including three anonymized teachers and an expert. Mr. Neufeld testified and called three lay witnesses. The Tribunal refused to permit three additional lay witnesses to testify.¹²

14. Mr. Neufeld offered the three additional witnesses as responsive contextual witnesses, not merely as persons wishing to express opinions about the publications. He submitted that the lived experiences of two persons who had identified as transgender, undergone gender transition, and later detransitioned (the "Detransitioners"), and of a gay man who viewed aspects of gender ideology and gender identity affirming practice as both a form of gay conversion therapy or homophobia and a threat to the continued recognition of gay identity, bore on the social and historical context of the expression, whether the publications addressed genuine matters of public controversy, and whether a reasonable person would understand criticism of gender identity affirming practices as hostility toward protected persons or as criticism of ideas, policies, and

¹⁰ Merits Decision at paras 4, 28-9.

¹¹ Merits Decision at paras 16.

¹² Merits Decision at opening and paras 25-6.

practices.¹³ The Tribunal found the proposed evidence irrelevant to the issues it was required to decide and, on that basis, concluded that it was neither necessary nor appropriate to admit.¹⁴

15. In a separate jurisdictional decision, the Tribunal held that section 7 could constitutionally apply to the impugned online publications because the provision, in pith and substance, regulates discrimination and civil rights rather than telecommunications.¹⁵

C. The Merits Decision

16. The Tribunal found:

- a. a violation of section 13 because Mr. Neufeld's public statements caused or contributed to a discriminatory work environment for gay, lesbian, bisexual, transgender and/or queer teachers;¹⁶
- b. six publications violated section 7(1)(b) because they were likely to expose transgender and/or gay and lesbian persons to hatred or contempt;¹⁷ and
- c. 24 publications violated section 7(1)(a) because they indicated discrimination or an intention to discriminate against gay, lesbian, bisexual, transgender and/or queer persons in public education.¹⁸

17. The Tribunal dismissed the section 7(1)(b) allegations concerning 13 publications because they did not meet the high threshold for hate speech, and dismissed the section 7(1)(a) allegations concerning six publications because their potential discriminatory harms were too remote. Its disposition therefore turned on the lines it drew between offensive or repugnant expression and hate speech, and between public policy opinion and a publication indicating discrimination or an intention to discriminate.¹⁹

¹³ Affidavit of Barry Neufeld affirmed May 12, 2026, Ex. A ("Hearing Transcript") at 851-60.

¹⁴ *Chilliwack Teachers' Association v Neufeld* (No. 6), [2024 BCHRT 337](#) [Neufeld 6] at para 3.

¹⁵ *Chilliwack Teachers' Association v Neufeld* (No. 3), [2024 BCHRT 232](#) [Neufeld 3] at para 7.

¹⁶ Merits Decision at paras 85, 115-6.

¹⁷ Merits Decision at paras 9, 229.

¹⁸ Merits Decision at paras 10, 279, 289-90.

¹⁹ Merits Decision at paras 9-10.

18. In developing the context for its analysis, the Tribunal reasoned that describing transgender identity as “gender ideology” or “transgenderism” could conceal an attack on persons behind an asserted critique of ideas. It described Mr. Neufeld’s position as a form of “existential denial” and stated that terminology of that kind could create conditions in which discrimination and hatred flourish.²⁰

19. The Tribunal acknowledged that Mr. Neufeld did not advance a developed *Charter* argument in closing. It nevertheless held that it was incumbent on the Tribunal to balance freedom of expression in applying section 7(1)(a), and it purported to do so.²¹

D. The responses to the petition

20. The CTA opposes all relief. It submits that the Tribunal identified the correct legal tests, that the challenged conclusions were supported by the evidence, that the section 7(2) and freedom of belief arguments were not raised before the Tribunal, and that the allegation of bias is unsupported. It further submits that, to the extent Mr. Neufeld directly challenges the constitutional validity of section 7(1)(a), the provision imposes a reasonable limit on freedom of expression that is justified under section 1 of the *Charter*.²²

21. The Tribunal takes no position on the merits of the petition. It addresses the record, new argument doctrine, standards of review, procedural fairness, and available relief. It submits that the identification of the correct legal test is reviewed for correctness, while the determination whether the facts satisfy that test engages extricable factual issues reviewed under section 59(2) of the *ATA*.²³

PART III – ISSUES

22. The issues are:

- a. What standards of review apply under section 59 of the *ATA*?

²⁰ Merits Decision at paras 55-7.

²¹ Merits Decision at paras 21-2.

²² CTA Response at paras 8, 131, 137-40, 145, 150-2, 156, 161, 169-70, 183-6, 196, 199.

²³ Tribunal Response at paras 48-9, 54-6, 72-4, 89-90, 139-41.

- b. Should the Court decline to consider any grounds as impermissibly new?
- c. Did the Tribunal err in interpreting or applying section 7(1)(a)?
- d. Did the Tribunal err in interpreting or applying section 7(1)(b)?
- e. Did the Tribunal err in interpreting or applying section 13?
- f. Did the Tribunal fail to conduct the proportionate *Charter* balancing required by law?
- g. In the alternative, if section 7(1)(a) prohibits the expression at issue, is the provision unconstitutional?
- h. Did the exclusion of the proposed lay evidence or the proceeding as a whole breach procedural fairness or give rise to a reasonable apprehension of bias?
- i. Did the Tribunal correctly determine the division of powers issue concerning the impugned online publications?
- j. What remedy is appropriate?

PART IV – LAW AND ARGUMENT

A. Standards of review under section 59 of the *ATA*

23. Section 59 of the *ATA* governs the standard of review analysis. Because the Legislature has expressly prescribed the applicable standards, the ordinary common law presumption of reasonableness is rebutted, pursuant to *Canada (Minister of Citizenship and Immigration) v Vavilov*.²⁴ The Legislature has prescribed the standards question by question. Correctness applies to questions of law. A factual finding may be set aside where there is no evidence to support it or where, in light of all the evidence, it is otherwise unreasonable. Discretionary decisions are

²⁴ [2019 SCC 65](#) [*Vavilov*] at paras 17, 34-5. See also *College of Physicians and Surgeons of British Columbia v Health Professions Review Board*, [2022 BCCA 10](#) at para 122.

reviewed for patent unreasonableness. Questions of natural justice and procedural fairness are determined by whether, in all the circumstances, the Tribunal acted fairly.

24. The identification of the correct legal test is a question of law reviewed for correctness. The question whether established facts satisfy that test involves extricable factual issues governed by section 59(2).²⁵ The Court must be careful neither to disguise factual disagreement as a legal question nor to allow a legal error embedded in the Tribunal’s framework to be insulated as factual application.²⁶

25. The petition identifies the Tribunal’s interpretation of sections 7(1)(a), 7(1)(b), and 13 of the *Code* as questions of law reviewable for correctness.

26. In particular, correctness governs:

- a. the meaning of “indicates discrimination or an intention to discriminate” in section 7(1)(a);
- b. whether section 7(1)(a) requires a concrete connection to discriminatory treatment or intention;
- c. the independent meaning and operation of the third branch of section 7(2);
- d. what constitutes an “activity otherwise permitted by this *Code*” and what relationship a communication must bear to that activity;
- e. the legal threshold under section 7(1)(b), including the proper role and limits of the so-called hallmarks of hate;
- f. whether negative beliefs, disregard for dignity, “erasure”, or failure to affirm can substitute for the statutory elements;

²⁵ *Vancouver Area Network of Drug Users v Downtown Vancouver Business Improvement Association*, [2018 BCCA 132](#) [*VANDU*] at paras 45-9.

²⁶ *VANDU* at paras 46-9; *Morgan-Hung v Human Rights Tribunal (BC)*, [2011 BCCA 122](#) at paras 25-31.

- g. the proper meaning and limiting function of discrimination “regarding employment” under section 13;
- h. the legal requirements of proportionate *Charter* balancing; and
- i. the constitutional validity of section 7(1)(a) and the division of powers question concerning the impugned online publications.

27. To the extent the Tribunal’s challenged conclusions rest on findings of fact, section 59(2) governs. It contains two independent grounds for intervention: a finding may be set aside where there is no evidence supporting it or where, in light of all the evidence, it is otherwise unreasonable. The Court is not confined to asking whether some isolated item of evidence exists. It may intervene where a material finding rests on speculation, ignores materially contradictory evidence, or lacks a logical evidentiary foundation—without reweighing the record or retrying the complaint.²⁷

28. That distinction matters here. The Court owes appropriate deference to supported findings about what was said, the circumstances of publication, and witness experience. It owes no deference to the Tribunal’s legal premises that disagreement with gender ideology is necessarily denial of persons, that generic hallmarks can function as proxies for hatred, that political advocacy indicates discrimination without a concrete connection to discriminatory treatment, or that section 7(2) has no work to do beyond rejecting a blanket “opinion exemption”. Those premises are legal and logically anterior to the factual conclusions they produced.

29. Procedural fairness is separately governed by section 59(5). The Court determines for itself whether the process was fair in all the circumstances; it does not defer to the Tribunal’s view of fairness. The excluded witness issue may involve discretionary case management, but the effect of that exclusion on Mr. Neufeld’s opportunity to answer the contextual case advanced against him is a question of fairness for the Court.²⁸

²⁷ *ATA* at section 59(2); *Kinexus Bioinformatics Corp. v Asad*, [2010 BCSC 33](#) [*Kinexus*] at paras 28-9.

²⁸ *Kinexus* at paras 24-5.

30. Constitutional validity is determined by this Court on correctness. The Tribunal lacked jurisdiction to decide the *Charter* validity of section 7(1)(a).²⁹ The direct section 2(b) and section 1 issue is therefore for this Court to decide. Separately, the division of powers question concerning the application of section 7 to the impugned online publications is a question of constitutional law that the Court must determine on correctness. The Court must decide for itself the proper characterization of the law as applied, the relevant heads of legislative authority, and whether the impugned application falls within provincial jurisdiction.³⁰

31. The standards should therefore be applied in sequence: first identify and correct the legal framework; then review the material factual findings under section 59(2) in light of that corrected framework; and finally determine whether the process was fair. The Respondents cannot preserve conclusions produced by an incorrect legal test merely by relabeling the dispute as factual application.

32. The logical fallacies pleaded in paragraph 30 of the petition are independently reviewable. To the extent they concern the meaning of sections 7 or 13, the proper role of the hallmarks, or the legal relationship among belief, expression, dignity, discrimination, and employment, they are errors of law reviewed for correctness under section 59(1). To the extent they infect findings of meaning, intention, causation, workplace impact, or Class-wide injury, they render those findings unsupported or otherwise unreasonable in light of all the evidence under section 59(2).

33. Under section 59(2), a factual finding may be set aside where there is no evidence to support it or where, in light of all the evidence, it is otherwise unreasonable. A finding is otherwise unreasonable where the Tribunal's stated premises do not rationally support its conclusion, where the required evidentiary bridge is missing, or where the reasoning rests on an erroneous legal premise. The reviewing court must assess the reasons actually given; it cannot supply a rationale the Tribunal did not provide.

²⁹ *Code* at section 32; *ATA* at section 45(1); *Vavilov* at paras 53-7.

³⁰ *Vavilov* at paras 53-7; *Société des casinos du Québec inc v Association des cadres de la Société des casinos du Québec*, [2024 SCC 13](#) at paras 92-5; *Reference re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11](#) [*Greenhouse*] at paras 50-6.

34. The Merits Decision appears repeatedly to begin from the premise that Mr. Neufeld’s expression was “anti-LGBTQ” discrimination and then interpret the publications, social context evidence, hallmarks, institutional reactions, and alleged workplace effects to confirm that premise.³¹ That approach is procedurally unfair, as was foreclosing Mr. Neufeld’s fair opportunity to answer the premise and the interpretations said to support it with responsive fact evidence. The reasons disclose that the Tribunal worked backward from a preferred outcome. Neither the Respondents nor the Court may cure that defect by supplying a rationale the Tribunal did not provide; judicial review examines the reasons actually given.

35. A reasonable apprehension of bias is analytically distinct from procedural unfairness. Mr. Neufeld submits that the Tribunal’s treatment of the evidence, including its restrictions on responsive evidence, denied Mr. Neufeld a fair opportunity to answer the case against him. Viewed cumulatively with the Tribunal’s description of opposition to “gender ideology” as an “insidious veneer” concealing an attack on “trans people”, those restrictions support a reasonable apprehension that the panel had prejudged the meaning of Mr. Neufeld’s expression before conducting its publication-by-publication analysis.³²

B. The factum develops the pleaded grounds; it does not advance a new case

36. The Respondents characterize the petition as insufficiently particularized and portions of Mr. Neufeld’s argument as new. The objection confuses the function of pleadings with the function of written argument. The petition identified the Merits Decision, the statutory provisions in issue, the challenged interpretations, the impugned findings, the constitutional and jurisdictional questions, the procedural objections, and the relief sought. It pleaded, among other things, that the Tribunal misinterpreted sections 7(1)(a), 7(1)(b), 7(2), and 13; ignored context; overstretched the hallmarks of hate; misconstrued Mr. Neufeld’s expression; relied on logically fallacious reasoning; made unreasonable findings; excluded material evidence; and failed to respect the constitutional limits on its statutory mandate.³³

³¹ Merits Decision at paras 55-7.

³² *Yukon Francophone School Board, Education Area No. 23 v Yukon (Attorney General)*, [2015 SCC 25](#) [*Yukon*] at paras 20, 22-6, 37.

³³ Petition, Part 1 at paras 1-5; Part 3 at paras 7-31.

37. This factum performs the ordinary function of written argument. It develops those pleaded grounds by identifying the relevant portions of the reasons, applying the governing standards under section 59 of the *ATA*, analyzing the record and authorities, and responding to the positions taken by the Respondents. Greater analytical detail does not transform a pleaded error into a new ground. In particular, the analysis of paragraphs 55 and 56, the individual publications, section 7(2), the legislative record, the hallmarks methodology, the employment nexus, and *Charter* proportionality explain why the errors pleaded in the petition are reviewable; it does not substitute a materially different case.

38. Nor have the Respondents demonstrated uncertainty or prejudice. The CTA's over-200-paragraph response organizes and answers the alleged errors individually. The Tribunal's detailed response identifies the statutory, constitutional, factual, procedural, jurisdictional, and remedial issues and supplies the authorities it considers applicable. Their responses demonstrate that they understood the case they were required to meet. The question is therefore whether the pleaded grounds succeed on the reasons and record—not whether every supporting argument, authority, quotation, and record reference appeared in the petition itself.

C. The Court should consider the grounds that arise from the decision and record

39. The general rule against new issues on judicial review protects the legislature's choice of first instance decision maker, prevents prejudice, and ensures an adequate record. It is discretionary, not mechanical. The Court considers whether those rationales are actually engaged.³⁴

40. Mr. Neufeld does not ask the Court to determine a new factual theory requiring evidence not before the Tribunal. The core grounds arise from the Tribunal's reasons, the tests it selected, and the way it characterized and balanced the expression. The record is complete and the Respondents have addressed the grounds in detail.

41. The *Charter* values ground is not a new constitutional claim in the relevant sense. Although Mr. Neufeld did not develop a *Charter* argument in closing, the Tribunal expressly identified

³⁴ *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011 SCC 61](#) at paras 22-8; *RNL Investments Ltd. v British Columbia (Agricultural Land Commission)*, [2021 BCCA 67](#) at para 73-5.

section 2(b) of the *Charter* as engaged, held that it was incumbent on the panel to balance the section 2(b) interest it identified regardless of his submissions, and said that it had done so.³⁵ The adequacy of that balancing is therefore reviewable on the face of the decision. A reviewing court may assess whether the reasons demonstrate the proportionate balancing the Tribunal said the law required.

42. The Respondents' preservation objection is especially misplaced concerning freedom of belief and the Tribunal's assertion that Mr. Neufeld "elects" not to hold the belief the panel accepted. That reasoning originated in paragraphs 55 and 56 of the final Merits Decision. It was not a legal test, allegation, or proposed finding put to Mr. Neufeld in advance in a form that required him to anticipate that the Tribunal would treat his beliefs as voluntarily chosen, equate disbelief in a proposition with denial of persons, and use that premise as an interpretive foundation for liability.

43. A party cannot reasonably be expected, before reasons are issued, to object to a novel error first committed in those reasons. The rule against new issues on judicial review protects the integrity of the administrative process; it does not immunize reasoning that the decision maker introduces for the first time in its final decision. Where the alleged error appears on the face of the reasons, requires no new evidence, and concerns the Tribunal's own legal and constitutional analysis, judicial review is the first realistic opportunity to challenge it.

44. Mr. Neufeld had already placed the substance of belief before the Tribunal by distinguishing beliefs and ideas from persons, comparing competing belief systems, defending his freedom to hold and express his views, and arguing that criticism of ideology is not discrimination.³⁶ The Tribunal answered those submissions with its new "election", "existential denial", and "insidious veneer" reasoning.³⁷ The petition and factum do not introduce a different factual case; they challenge the answer the Tribunal gave.

45. There is no prejudice or missing record. The challenged words are in the Merits Decision, the relevant publications and submissions are in the record, and both Respondents have addressed

³⁵ Merits Decision at paras 21, 232.

³⁶ Tribunal Record, Ex. 38 ("Neufeld Closing") at paras 3-7, 11, 53, 58-61, 101-3.

³⁷ Merits Decision at paras 55-7.

the section 2(b) point. Refusing to consider it would produce an untenable result: the more novel and unexpected the error introduced in final reasons, the less reviewable it would become because the affected party failed to predict it beforehand.

46. Likewise, Mr. Neufeld’s reliance on the distinction between criticism of ideas and discrimination against persons is not a new factual case. It was central to his defence and was expressly recognized in the Tribunal’s reasons.³⁸

47. The Respondents overstate the new argument objection concerning section 7(2). Mr. Neufeld did not cite the subsection by number, but he squarely advanced its factual and interpretive substance. He argued that his publications were communications made through lawful political participation, public policy advocacy, criticism of government educational policy, and attempts to persuade the public and government—not discrimination against persons. He relied on *Palmer and Palmer v British Columbia Teachers’ Federation and others*³⁹ for the proposition that the *Code*’s purposes require freedom to comment on matters of public interest, take political action, influence government, obtain public support, and participate in British Columbia’s social and political life.⁴⁰

48. The closing submissions also characterized letters, newsletters, petitions, speeches, and similar publications as mechanisms through which persons participate in and encourage others to participate in provincial social and political life. Mr. Neufeld argued by analogy that his communications were opinion about what government should do, formed part of legitimate political and social debate, targeted educational policy and ideology rather than identifiable persons, and lacked concrete discriminatory harm.⁴¹

49. The Tribunal understood and decided that issue. It expressly recorded that Mr. Neufeld argued his publications fell within the category of opinion and ongoing public debate and “as such, cannot violate” section 7(1)(a). It then quoted section 7(2), stated that section 7(1) is

³⁸ Merits Decision at paras 270.

³⁹ [2008 BCHRT 322](#) [*Palmer*].

⁴⁰ Neufeld Closing at paras 13-24; *Palmer* at paras 55-6.

⁴¹ Neufeld Closing at paras 6-9, 21-4, 34-7, 101-3.

subject to that exemption, and rejected the proposition that opinion or policy debate was statutorily exempt.⁴²

50. The statutory citation was therefore absent, but the issue was joined, understood, and expressly decided in substance. A decision maker's express analysis of a statutory issue does not escape review merely because a party did not cite the subsection by number. Reliance on section 7(2) does not introduce new facts or a new theory of the publications. It identifies the statutory provision bearing on an argument the Tribunal actually addressed. The rationales for refusing genuinely new issues—lack of a record, prejudice, and absence of the Tribunal's views—are not materially engaged.

51. Mr. Neufeld does not submit that section 7(2) creates a blanket immunity for anything labelled opinion or public debate; that is the Tribunal's own mischaracterization of his argument. The relevant "activity otherwise permitted by this *Code*" must be identified with precision. On this record, the activities include participation in British Columbia's political and cultural life; advocacy directed toward government policy; campaigning and speaking as an elected trustee; public discussion of educational policy; requesting government action; and attempting to persuade voters, parents, trustees, and public officials. Section 3(a) identifies full and free participation in the economic, social, political, and cultural life of British Columbia as a purpose of the *Code*, and *Palmer* treated letters, newsletters, petitions, public comment, and political action as mechanisms of that participation.⁴³

52. Nothing in the text of section 7(2) says that the activity must be "affirmatively" authorized by another operative provision of the *Code*. The Respondents identify no authority imposing that restriction. The subsection says "an activity otherwise permitted by this *Code*". The Court must give those words their ordinary and purposive meaning, not implicitly add "expressly", "affirmatively", or "elsewhere". Section 3(a) expressly identifies full and free participation in British Columbia's economic, social, political, and cultural life as a purpose of the *Code*. Public comment, political advocacy, campaigning, petitioning government, and attempting to persuade citizens and public officials are activities through which that statutory purpose is realized.

⁴² Merits Decision at paras 254-6.

⁴³ Neufeld Closing at paras 21-4, 34-7, 58-61, 101-3; *Palmer* at paras 55-6.

Palmer confirms that section 7 must not be interpreted to prevent those activities. Mr. Neufeld submits that section 7(2) protects a communication genuinely related to such an activity even where section 7(1) would otherwise be engaged; whether a particular communication has that relationship must be determined in context.

53. The *Code* prohibits discriminatory publications; it does not create freestanding prohibitions on belief, disbelief, logical reasoning, moral judgment, or criticism of ideology and policy. Those matters may form part of the context in which a publication is interpreted, but liability arises only where the publication satisfies the enacted elements of section 7(1)(a) or section 7(1)(b). The Tribunal erred by treating Mr. Neufeld’s reasoning process and underlying beliefs—his rejection of propositions about sex and gender, his moral assessment of educational and medical practices, and his criticism of gender ideology—as if they supplied the statutory conclusion.⁴⁴

54. Nor does the *Code* compel belief in a religious, philosophical, ontological, biological, or social proposition merely because the proposition is associated with a protected characteristic. More fundamentally, the *Code* imposes no affirmative duty to acknowledge, affirm, recognize, validate, or make any statement about another person’s identity or existence, whether in the terms asserted by that person or otherwise. It prohibits specified discriminatory publications; it does not compel speech. Refusal to affirm, silence, disbelief, or even express denial of an asserted identity is not a freestanding contravention. The Complainant must still prove the enacted elements of section 7(1)(a) or section 7(1)(b).

55. The fact that Mr. Neufeld did not deny the physical existence, humanity, dignity, or entitlement to equal legal treatment of persons identifying as transgender remains relevant because it exposes the Tribunal’s factual mischaracterization of what he said. However, Mr. Neufeld did not bear a legal duty to make those acknowledgements. The proper inquiry is not whether Mr. Neufeld said the affirming things the Tribunal expected him to say. It is whether something he actually published objectively indicated discriminatory treatment or was likely to expose protected persons to extreme detestation and vilification.

⁴⁴ Merits Decision at paras 55-7, 284.

D. Paragraph 55 rests on a false equivocation and an impermissible double standard

56. Paragraph 55 contains a central logical error that cannot be reconciled with objective adjudication of expression. The Tribunal reasoned that a person may accept that another person is Christian without believing Christianity, but cannot accept that another person is transgender without accepting *as true* that gender identity is separate from sex assigned at birth. It therefore characterized disagreement with that proposition as disbelief in—or “existential denial” of—transgender persons.

57. The comparison equivocates on the word “accept”. If “accept” means acknowledging another person’s existence and sincerely held self-description, a person can accept that another person identifies as Christian without affirming Christian doctrine, and can equally accept that another person identifies as transgender without affirming that gender identity determines sex or that it is independent of sex. If “accept” instead means affirming *as true* the propositions underlying the identity, then the same requirement applies to Christianity: one could not “accept” a person as Christian in this more demanding way without accepting Christianity’s claims about God, creation, salvation, and human identity. The Tribunal used the weaker meaning for Christianity and the stronger meaning for transgender identity.

58. This is a double standard. The Tribunal permitted a non-Christian to distinguish respect for a person who identifies as Christian from belief in Christianity, but denied Mr. Neufeld the equivalent distinction between respect for persons identifying as transgender and belief in the collection of propositions he described as gender ideology. For further certainty, when one accepts that another is “Christian”, he is not required to believe Christian doctrine; he is believing that the self-identified Christian person believes it. When one accepts that another is “transgender”, he is not required to believe transgender doctrine; he is believing that the self-identified transgender person believes it. Equivocating on the meaning of “accept” as between two groups protected under the same provision is a selective inconsistency the law cannot countenance.

59. But even that comparison understates the error. Nothing in the *Code* required Mr. Neufeld to profess respect, affirm identity, acknowledge existence, validate self-description, or say anything at all. The *Code* does not compel an approved declaration about protected persons. It prohibits publications meeting specified statutory thresholds. Disagreement, non-affirmation, silence, or denial is not a freestanding contravention of the *Code*. The *Code* is prohibitory, not prescriptive; it creates a negative right against discrimination, not a positive right of affirmation.

60. The error was material and foundational. By defining disagreement with the Tribunal's preferred account of gender identity as "existential denial", paragraph 55 predetermined the disputed question whether Mr. Neufeld's target was persons or ideas, policies, educational practices, and medical interventions. The Tribunal then carried that premise into its findings of "erasure", its treatment of the distinction between ideology and persons as an "insidious veneer", its "transgender"-specific hallmarks of hate, and its conclusions under sections 7(1)(a), 7(1)(b), and 13. The reasoning is circular: the Tribunal first defined criticism of the proposition as denial of persons, and then relied on that supposed denial to prove that the criticism targeted persons.

61. The Court should expressly reject paragraph 55's equivocation. The legally relevant questions are what the publications communicated to a reasonable person, whom or what they targeted, and whether they indicated discrimination or an intention to discriminate or crossed the extreme threshold of detestation and vilification. Those questions cannot be answered by compelling affirmation of a contested proposition, imposing an unstated duty to acknowledge identity or existence, or treating refusal to speak in approved terms as proof of discriminatory meaning. Even an express denial of an asserted identity remains evidence to be assessed in context; it is not a freestanding contravention of the *Code* and does not relieve the Complainant of proving every statutory element.

62. From time to time, the Tribunal claimed to understand that Mr. Neufeld's belief about sex and gender was not, by itself, enough to constitute discrimination or hate speech, and that debate about SOGI education could occur without violating section 7.⁴⁵ But a stated boundary does no work unless the reasons show clearly where it was drawn. In the findings Mr. Neufeld challenges, the Tribunal did not adequately identify the words in each publication that crossed

⁴⁵ Merits Decision at paras 154, 207, 280.

the applicable statutory line, or explain why they did so without treating his underlying belief and criticism of policy as sufficient. The Tribunal's liability findings must be tested against the limits it professed to recognize.

E. The Tribunal placed protected belief at issue but failed to analyze freedom of belief

63. Section 2(b) protects not only outward expression but “freedom of thought, belief, opinion and expression”. The Tribunal placed Mr. Neufeld's underlying beliefs at the centre of its reasons. It examined whether gender identity is separate from sex, whether his account was a belief system, whether his refusal to accept the contrary proposition amounted to denial of persons, whether his beliefs were entrenched, and whether additional information could alter them.⁴⁶ It nevertheless failed to analyze the independent constitutional protection afforded to holding, rejecting, comparing, reasoning from, and expressing beliefs.

64. Constitutional protection does not depend on the Tribunal finding the belief true, reasonable, informed, scientific, compassionate, socially valuable, or consistent with prevailing institutional opinion. Section 2(b) protects wrong, unpopular, offensive, heterodox, and deliberately reasoned beliefs. The Tribunal's task was to determine whether particular publications crossed the statutory boundary, not to adjudicate which underlying beliefs citizens may hold.⁴⁷

65. Paragraph 55's statement that a person “elects” not to believe that gender identity is separate from sex assigned at birth was unsupported. The Tribunal identified no evidence about how beliefs of this kind are formed, whether a person can adopt or discard them by volition, whether Mr. Neufeld chose his conclusions, or whether they arose from conscience, religion, moral reasoning, life experience, empirical claims, or some combination. Whether belief is voluntary is a complex psychological and philosophical proposition, not an adjudicative fact the Tribunal could simply assume.

66. In any event, section 2(b) does not confine its protection to beliefs the holder did not consciously form. Political opinions are often consciously formed. Moral judgments may be deliberately adopted. Religious, philosophical, and scientific commitments may involve agency

⁴⁶ Merits Decision at paras 55-7, 296.

⁴⁷ *Whatcott* at paras 49-51, 58.

and reflection. They do not lose constitutional protection because the holder participated in forming them. The Tribunal imported a concept of immutability associated with protected characteristics into the scope of freedom of belief, where it does not belong.

67. The Tribunal’s characterization of Mr. Neufeld’s disbelief was material. It framed his rejection of a disputed proposition about sex and gender as “existential denial”, and his distinction between criticism of ideas and attacks on persons as an “insidious veneer”. In discussing the “erasure” hallmark, the Tribunal said that Mr. Neufeld engaged in it by insisting that “trans” identities rest on a belief system he called “gender ideology”.⁴⁸ The Tribunal also acknowledged that his belief that gender is static and binary was not enough to constitute hate speech in every case, and that criticism of “gender-affirming” medical treatment may, in some cases, serve as a proxy for an attack on “trans” people.⁴⁹ The difficulty is not that the Tribunal stated no limit. It is that, in the findings challenged here, Mr. Neufeld submits the reasons do not adequately show what further meaning in the particular publications crossed the statutory line, rather than treating criticism of the underlying proposition as denial of persons.

68. The required *Charter* analysis had to account for both dimensions of section 2(b): the freedom to hold and reason from the belief, and the freedom to express it, subject only to properly interpreted statutory limits. The Tribunal acknowledged an obligation to address *Charter* values but analyzed principally the permissible restriction of expression after defining the belief itself as denial. It did not ask whether its treatment of the belief burdened freedom of thought, belief, and opinion or whether that burden was proportionate.

69. The Court should hold that the Tribunal erred by making the legitimacy and supposed voluntariness of Mr. Neufeld’s beliefs part of the liability analysis without evidence and without the proportionate *Charter* values analysis required by law. The legal inquiry remains whether what he published satisfied the statutory elements—not whether the Tribunal approved the beliefs from which the publications arose.

⁴⁸ Merits Decision at paras 55-7, 149.

⁴⁹ Merits Decision at para 154-5.

F. Paragraphs 56 and 57 compound the error through circular reasoning and unsupported inferences

70. Paragraphs 56 and 57 do not repair paragraph 55. They compound it through a chain of logical fallacies. The Tribunal stated that calling “transness” gender ideology permits “anti-trans activists” to hide behind a “veneer of reasonableness”; that behind this “insidious veneer” lies the proposition that “transness” is not real; that the terminology makes it easier to ignore that “transgender” persons are human beings; that the suffix “-ism” suggests “transgender” persons have an agenda; and that these terms can create conditions in which discrimination and hatred flourish.

71. First, the reasoning **begs the central question**. Whether Mr. Neufeld’s target was persons or a set of propositions, policies, practices, and institutional commitments was disputed. Paragraph 56 assumed the answer by relabeling the distinction itself a “veneer”. It then used that assumption to conclude that the criticism was really directed at persons. An adjudicator cannot prove that a stated distinction is false merely by declaring that it conceals the opposite proposition.

72. Second, paragraphs 56 and 57 **poison the well and substitute motive attribution for objective analysis**. By introducing the category “anti-trans activists”, describing their position as a disguise, and calling the asserted distinction “insidious”, the Tribunal attributed concealment and bad faith before examining the publications individually. No evidentiary finding established that Mr. Neufeld used the terminology as camouflage for hostility to human beings. The language discredited his explanation by assuming and assigning an improper motive rather than testing the meaning of what he said in context.

73. Third, the reasoning presents a **false dichotomy**: either one affirms that “transness” is real in the Tribunal’s stipulated sense, or one denies “transgender” persons and attacks human beings. That excludes the logically available position that a speaker acknowledges the existence, humanity, dignity, legal equality, and sincere self-identification of persons identifying as transgender while disputing ontological, philosophical, or social propositions about the relationship between sex and gender, or opposing particular educational and medical practices.

The *Code* protects persons from discrimination; it does not eliminate that distinction by compelling assent to contested ideas and propositions.

74. Fourth, the inference from terminology to agenda is a **non sequitur and a linguistic fallacy**. The suffix “-ism” ordinarily denotes a doctrine, theory, system, practice, movement, paradigm or collection of ideas. Its use does not logically imply that every person associated with the subject has a coordinated agenda, still less that the speaker regards those persons as less than human. “Capitalism”, “feminism”, “environmentalism”, “Catholicism”, and “liberalism” identify systems of ideas without denying the existence or humanity of capitalists, feminists, environmentalists, Catholics, or liberals. Nothing about the morphology of “transgenderism” proves hatred, deception, conspiracy, or dehumanization.

75. Fifth, paragraphs 56 and 57 rely on an **unsupported causal chain and slippery slope progression**. They move from using contested terminology, to making it “easier” to ignore humanity, to suggesting an agenda, to creating conditions for discrimination and hatred. Each step requires evidence and a contextual assessment of the particular publication. None follows necessarily from the preceding step. A possibility that words “can” contribute to harmful conditions is not proof that these publications were likely to expose protected persons to hatred or contempt, indicated discriminatory treatment, or caused an employment-related adverse impact.

76. Sixth, the reasoning is **self-sealing**. If Mr. Neufeld denied hostility to persons, that denial was treated as evidence of the “veneer”; if he criticized an ideology, the use of that category was treated as proof that he denied persons; and if he relied on sources or reasons, those could be treated as devices lending credibility to the supposed attack. A framework in which every denial confirms the allegation cannot function as a lawful application of the statutory tests: it makes the allegation impossible to rebut and dispenses with proof of the statutory elements.

77. Seventh, paragraph 56 **substitutes emotive insistence on a proposition not in dispute for legal reasoning**. The Tribunal declared: “People can and do live beyond the binary. People can and do decide that they were assigned the incorrect gender at birth. Trans people are here, existing in schools and homes and workplaces”. It then adopted Mr. Hansman’s emphatic

formulation: “They are there... There are students enrolled in British Columbia public schools who are transgender and non-binary. Likewise, school districts have employees that are transgender and non-binary”. The repetition is rhetorically and emotionally forceful but proves nothing in dispute. It also serves to transform the Tribunal from an adjudicative body that is required to be unbiased and dispassionate into an advocate for the Complainant and its position, which, of course, raises a reasonable apprehension of bias. Mr. Neufeld did not deny that persons identify as transgender or non-binary, attend schools, live in communities, hold employment, possess humanity and dignity, or enjoy equal legal protection.

78. The actual disputes concerned different propositions: whether gender identity is independent of biological sex; whether self-identification changes a person’s sex; whether public schools should present those propositions as ontologically true; whether particular educational or medical practices are beneficial or harmful; and whether Mr. Neufeld’s criticism of those propositions and practices met the statutory tests. The fact that persons identifying as transgender exist supplies no logical answer to any of those questions. It does not prove that criticism of gender ideology denies human beings, indicates discriminatory treatment, exposes anyone to extreme detestation and vilification, or causes an employment-related adverse impact.

79. The passage therefore attacks a **strawman** and repeats paragraph 55’s equivocation between two meanings of existence. Persons who identify as transgender indisputably exist. That ordinary fact does not establish as incontestable every ontological, biological, social, educational, or medical proposition associated with “transgender” identity. The Tribunal repeatedly asserted the first proposition as though it proved the second, and then treated disagreement with the second as denial of the first.

80. The phrase “no matter the attempted erasure” makes the circularity unmistakable. It assumes, without first proving, that criticism of gender ideology is an attempt to erase persons. The Tribunal then invokes the undeniable existence of those persons to condemn the supposed erasure and later relies on “erasure” as evidence of discrimination and hatred. The conclusion is embedded in the Tribunal’s language rather than derived from the publications through the applicable statutory tests.

81. The concern is not merely that the prose is overwrought and indicative of bias. The problem is that the emotional crescendo performs analytical work it cannot bear. “They are there” is not a reasoned finding that any particular publication crossed the boundary protected by section 2(b) and prohibited by sections 7 or 13. In a decision imposing liability for political expression, emphatic repetition and emotional appeal cannot substitute for neutral identification of the target, close reading of the publication, proof of the statutory effect, and proportionate *Charter* analysis.

82. The Tribunal committed a further and distinct conflation by converting a claim about the alleged effect of educational content into an accusation about the inherent character of protected persons.⁵⁰ Mr. Neufeld argued that early or heavy exposure to sexual and gender related material could desensitize children, weaken boundaries, or perform preparatory work that actual predators might exploit. In one publication, he expressly said that the people who designed SOGI might not have intended that alleged effect, but that it was an unintended side effect that did “a lot of the work that child predators used to have to do themselves”.⁵¹

83. Whether that claim is true, false, exaggerated, offensive, or unsupported is a separate question. Its subject is the alleged effect of curriculum, educational content, and institutional practice. Its asserted mechanism is desensitization and weakened boundaries. Its identified predators are separate actors who might exploit the condition. The statement does not logically communicate that persons identifying as gay, lesbian, bisexual, transgender and/or queer, or teachers identifying as gay, lesbian, bisexual, transgender and/or queer are themselves child predators.

84. The Tribunal shifted each component of the proposition. It shifted the subject from curriculum and educational practice to a protected class. It shifted agency from actual predators to persons and teachers identifying as gay, lesbian, bisexual, transgender and/or queer. It shifted causation from an alleged preparatory effect of content to an inherent danger supposedly posed by protected persons. It then treated the transformed proposition as evidence of the Predator, Powerful Menace, and Recruitment/Contagion hallmarks, and did so using the most extreme case

⁵⁰ Merits Decision at paras 90, 146-8.

⁵¹ Merits Decision, Appendix A, item 21 at paras 60-6.

examples with only bald statements here and there to justify the comparison to Mr. Neufeld's publications apart from resort to the "insidious veneer" framing.⁵²

85. That inferential bridge required proof from the words and context of each publication. It could not be supplied merely by the historical fact that "anti-LGBTQ" propaganda has sometimes portrayed persons identifying as gay, lesbian, bisexual, transgender and/or queer as predators. Context may illuminate meaning; it cannot replace the publication's actual grammar, target, agency, and causal claim. By treating an allegation about educational sexualization as an accusation of inherent predation by protected persons, the Tribunal committed precisely the third conflation pleaded in paragraph 29 of the petition.

86. These errors were material. Paragraphs 55 to 57 supplied the interpretive lens through which the Tribunal later identified "erasure", deceiver or pretender tropes, recruitment or contagion, threats to children, "transgender"-specific hallmarks, discriminatory intention, and workplace harm. The Court should reject that lens and require the analysis to begin with the publications themselves: identify their actual target, consider their full context and reasonably available meanings, and determine whether the Complainant proved the statutory elements without presumptions about concealed motives, emotive appeals, or compelled ideological or philosophical agreement.

G. The Tribunal's opprobrium toward Mr. Neufeld's beliefs infected the entire analytical process

87. The errors in paragraphs 55 to 57 were not severable rhetorical excesses. They supplied the interpretive premise for the entire Merits Decision. Before turning to the later publication analyses, the Tribunal attached legal and moral opprobrium to Mr. Neufeld's underlying beliefs: disagreement became "existential denial"; the distinction between persons and ideas became an "insidious veneer"; the language of ideology became a mechanism for disregarding human beings; non-affirmation became attempted "erasure"; and the belief itself was framed as something Mr. Neufeld "elected" to hold.

⁵² Merits Decision at paras 55-7, 90, 146-8, 284(c)(iv).

88. Those premises made an adverse interpretation structurally inevitable. Once criticism of gender ideology was defined as an attack on “transgender” persons, the Tribunal no longer approached each publication neutrally to determine:

- a. whom or what the publication targeted;
- b. what it communicated when properly interpreted in context;
- c. whether a reasonably available non-discriminatory interpretation existed;
- d. whether it indicated discrimination or an intention to discriminate;
- e. whether it crossed the extreme threshold of detestation and vilification; or
- f. whether it caused an employment-related adverse impact.

89. The preliminary condemnation supplied the answers before the individualized analysis began.

90. The resulting taint was systemic. The Tribunal carried the same belief-based framework into:

- a. its identification of persons rather than ideas, institutions, policies, practices, or particular actors as the targets;
- b. its attribution of meanings, motives, and intentions Mr. Neufeld denied;
- c. its interpretation and application of section 7(1)(a);
- d. its development and application of “transgender”-specific hallmarks under section 7(1)(b);
- e. its treatment of the same generic hallmarks as incriminating or diluted according to overall impression;
- f. its acceptance of Dr. Saewyc’s foundational social context framework;
- g. its findings of workplace harm and causation under section 13;
- h. its extrapolation from three teachers and generalized research to the represented Class;
and

- i. its findings on vulnerability and remedy.

91. Some publications contained language capable of attracting independent scrutiny, including references to grooming, child abuse, teachers, deception, predators, mental illness, and threats to children. But a neutral adjudication had to distinguish particular actors from a protected class, conduct from inherent group characteristics, teachers generally from teachers identifying as gay, lesbian, bisexual, transgender and/or queer, institutions from persons, gender ideology from persons identifying as transgender, and offensive propositions from extreme detestation and vilification. The Tribunal's foundational premises prevented those distinctions from being adequately and fairly assessed.

92. The improper framework affected not only whether liability was found but its scope. It expanded:

- a. the number of publications found unlawful;
- b. the persons and protected groups said to be targeted;
- c. the meanings and intentions attributed to Mr. Neufeld;
- d. the causal consequences inferred from the publications;
- e. the breadth of the employment nexus and Class-wide impact; and
- f. the declaration, cease-and-refrain order, compensation, and other remedies.

93. The systemic error cannot be cured by identifying inflammatory words in selected publications and asserting, after the fact, that some liability was inevitable. The question is whether the Tribunal's actual reasons establish liability under a lawful framework.

94. The Court cannot know which findings would survive once the Tribunal's improper premises are removed. Nor should it reconstruct the reasons by stripping out paragraphs 55 to 57, reinterpreting the publications itself, and supplying the discrete section 7(1)(a) analysis of the 24 Education Publications that the Tribunal did not provide. Judicial review examines the reasons actually given; neither the Respondents nor the Court may supply a new rationale to sustain the

Tribunal's conclusion. That would substitute the Court's reasoning for the Tribunal's and convert judicial review into first instance adjudication.⁵³

95. The relevant question is not whether the evidentiary record might support some liability on different reasoning. It is whether the findings actually made were reached through the correct legal framework and a neutral assessment of the actual publications. They were not. Findings affected by the impugned belief-based framework should be quashed, rather than sustained on reasoning the Tribunal did not give. The Court should finally dispose of a particular issue if its lawful outcome is inevitable; otherwise the affected issues should be remitted.⁵⁴

H. The decision repeatedly substitutes conflation for proof

96. Paragraphs 55 to 57 were not isolated mistakes. They exemplified a recurring method of reasoning throughout the Merits Decision: the Tribunal moved from one proposition to a broader and legally decisive proposition without supplying the necessary logical or evidentiary bridge. The errors in reasoning matter whether or not the Tribunal ultimately found a particular publication unlawful; a decision not to impose liability does not cure an unsound step in the analysis. The repeated conflations relieved the Complainant of proving target, meaning, intention, causation, adverse impact, and Class-wide injury.

97. An intention to influence public policy became an intention to discriminate. The Tribunal stated that Mr. Neufeld "likely hopes" his publications will influence public policy and, "in this sense", intends a discriminatory outcome.⁵⁵ Advocacy for a policy the Tribunal regards as discriminatory does not, without more, establish a subjective intention that protected persons receive discriminatory treatment.

98. Opposition to institutional affirmation became opposition to inclusion of persons. Mr. Neufeld opposed affirming gender identity, teaching that gender is independent of sex, certain pronoun practices, SOGI resources, and "gender-affirming" care. The Tribunal converted those

⁵³ *Vavilov* at paras 96-7; *Clearview AI Inc v British Columbia (Information and Privacy Commissioner)*, [2026 BCCA 67](#) [*Clearview AI*] at para 76.

⁵⁴ *Vavilov* at paras 96-7, 139-42.

⁵⁵ Merits Decision at para 275.

positions into advocacy against making education inclusive of persons identifying as gay, lesbian, bisexual, transgender and/or queer, preventing teachers from supporting students, preventing teachers identifying as gay, lesbian, bisexual, transgender and/or queer from being “out”, reducing visibility, and erasing persons.⁵⁶ Inclusion of persons, institutional affirmation of propositions, use of particular resources, visibility of identity categories, and access to medical interventions are distinct concepts. The Tribunal treated them as interchangeable.

99. Refusal to affirm became denial of dignity. The Tribunal moved from non-affirmation of an identity proposition to disregard for inherent dignity, then used disregard for dignity as part of the section 7(1)(a) conclusion.⁵⁷ Legal dignity, respect for persons, agreement with self-conception, affirmation of identity, use of requested language, and acceptance of underlying propositions are not synonyms. Human rights law protects equal treatment; it does not convert disagreement into a denial of dignity.

100. Criticism of conduct became attribution of characteristics to a protected class. The publications criticized particular teachers, teachers implementing certain materials, unions, activists, institutions, medical professionals, and alleged practices. The Tribunal repeatedly generalized those criticisms into beliefs about teachers identifying as gay, lesbian, bisexual, transgender and/or queer or persons identifying as gay, lesbian, bisexual, transgender and/or queer as a protected class. Criticism of a particular actor is not criticism of a class; criticism of conduct is not attribution of inherent nature; criticism of teachers generally or on account of what they teach is not necessarily criticism because of sexual orientation or gender identity.⁵⁸

101. Claims about some children and diagnoses became a belief that “transgender” persons generally are psychologically damaged. Mr. Neufeld made claims concerning gender dysphoria, trauma, autism, mental illness, childhood abuse, misdiagnosis, and transition as a coping response among some persons. The Tribunal accepted evidence that several teachers identifying as transgender understood his frequent messages as saying that “trans people were psychologically damaged”.⁵⁹ A claim about possible causes or correlates among some persons

⁵⁶ Merits Decision at paras 62-3, 266-7, 281, 283-4, 288.

⁵⁷ Merits Decision at paras 55-7, 63, 274, 281, 284(a)(ii), 284(b)(i).

⁵⁸ Merits Decision at paras 201-2, 205, 281, 284(c)(iv).

⁵⁹ Merits Decision at para 110; Appendix A, item 9 at paras 29-31.

does not establish a universal attribution to every person who identifies as transgender. The Tribunal later treated the Education Publications as portraying “transgender” people generally as ill, misdiagnosed, delusional, or manipulated.⁶⁰ It did not explain how those passages supported a finding about “transgender” people generally, and “transgender” teachers specifically, rather than claims about particular children or some “transgender” persons. It is as if the Tribunal wished Mr. Neufeld was an ignoramus who held an irrational prejudice for people who identify as transgender instead of who he presented as during his testimony: a deeply knowledgeable and compassionate person who has studied the issues he articulately discusses and who comes with a lifetime of relevant experience.

102. Disputing an identity claim became an accusation of inherent deception. The Tribunal treated Mr. Neufeld’s description of gender identity as a disputed belief system as an instance of the “erasure” and deceiver/pretender themes. It then discussed the message that “transgender” people are “deceptive by nature” or “innately devious”, drawing on an example from another case. Elsewhere, it treated Mr. Neufeld’s accusation about Dr. Tam as an example of the deceiver/pretender construct.⁶¹ Those are different propositions. Disputing a claim about gender identity does not necessarily accuse anyone of conscious deception; an accusation about a particular person does not, without explanation, attribute inherent dishonesty to “transgender” people as a class.

103. Further, public office became employment authority. The Tribunal moved from Mr. Neufeld’s trustee status, vote, platform, potential influence, and public profile to the conclusion that he was integral to the teachers’ workplace and uniquely positioned to alter their working conditions. Political status is not employment authority; potential capacity to persuade is not power to direct; public prominence is not supervision; and institutional association is not institutional adoption.⁶²

104. Institutional reaction became proof of the allegation prompting the reaction. Union condemnation, parent council criticism, the Minister’s demand for resignation, the Board’s loss

⁶⁰ Merits Decision at para 284(b)(i).

⁶¹ Merits Decision at paras 55, 93, 149-51, 218-9, 276(c).

⁶² Merits Decision at paras 75-81, 115.

of confidence, media attention, protests, and meeting security prove that the controversy was intense and institutions reacted.⁶³ These things do not prove that Mr. Neufeld caused discrimination regarding employment. Institutional reaction cannot become self-validating evidence that the original allegation was true.

105. Temporal association became causation and “tacit permission”. The Tribunal accepted that “anti-LGBTQ” speech and conduct by District employees, parents, and students increased after Mr. Neufeld’s initial publication and treated this as evidence that he emboldened others.⁶⁴ Events occurring later, ideological similarity, and participation in the same controversy do not by themselves establish causation. The Tribunal needed to explain the evidentiary basis for inferring that others encountered his publications, understood them in the asserted way, and acted because of their influence.

106. A feeling of unsafety became a finding of a poisoned workplace. Witnesses’ sincere feelings were evidence of state of mind. They did not by themselves establish causation by Mr. Neufeld or an adverse impact regarding employment. The Tribunal repeatedly moved from “felt unsafe” to a poisoned workplace, from fear about job security to a finding of employment harm, and from subjective reaction to discrimination regarding employment without adequately explaining those causal and statutory steps.⁶⁵

107. Harm became discrimination. The Tribunal relied on offence, distress, anxiety, stigma, controversy, fear, reduced belonging, and generalized social harm. Not every harm is discrimination. Expression causing harm, harm connected to a protected characteristic, a publication indicating discriminatory treatment, hate speech, an adverse impact regarding employment, and compensable injury caused by a *Code* violation are separate propositions requiring separate proof.⁶⁶

108. Historical vulnerability became a substitute for proof of present impact, causation, and magnitude. Vulnerability may make proven discrimination more serious and inform context. It

⁶³ Merits Decision at paras 101-4.

⁶⁴ Merits Decision at paras 109, 112, 159.

⁶⁵ Merits Decision at paras 85, 95-6, 106, 108-15.

⁶⁶ Merits Decision at paras 94, 96-8, 263, 275-6, 301-2, 310, 319-20.

does not establish that a particular publication caused a particular impact, that the predicted effect occurred, that Mr. Neufeld caused it, or that each unidentified Class member experienced significant injury. The Tribunal repeatedly used vulnerability to support meaning, likelihood, occurrence, causation, extrapolation, and compensation.⁶⁷

109. Further still, representative procedure became substantive proof of Class-wide injury. A representative complaint does not require every affected person to testify. But procedural permission to proceed for a class does not prove that every unidentified member suffered discrimination or compensable injury. The Tribunal inferred significant injury across the Class from three teacher witnesses, Mr. Klettke's evidence, and generalized social context; it separately used demographic estimates to place the Class at 45 to 163 persons. Representative procedure does not relax the burden of proving a rational basis for Class-wide relief.⁶⁸

110. These conflations were legally consequential. At each stage, the Tribunal substituted proximity, association, or moral characterization for an element requiring proof. Their cumulative effect was to make the decision self-reinforcing: the beliefs established the discriminatory meaning; the discriminatory meaning established harm; generalized harm established workplace impact; workplace impact established the nexus; vulnerability established Class-wide injury; and the Class-wide injury confirmed the original characterization. The Court should reject that chain and require each statutory element, causal step, and remedial inference to be established independently on the record.

I. The legislative record preserves vigorous policy debate and confines section 7 to discriminatory publications and extreme hate propaganda

111. The legislative debates support that section 7 was not enacted to empower the Tribunal to determine which contested ideas may be expressed. The amendment was introduced against a specific mischief: cross burnings, organized hate fests, hate hotlines, white supremacist recruitment in schools, conspiracy propaganda, and organized campaigns directed at making audiences despise protected groups. The Minister described "cross-burnings, organized hate

⁶⁷ Merits Decision at paras 52-7, 105-7, 157-9, 306-10, 320, 327-8.

⁶⁸ Merits Decision at paras 301-2, 306-10, 319-20, 325-8; *Silver Campsites Ltd v James*, [2013 BCCA 292](#) [*Silver*] at paras 37-42.

festivals, hate hotlines and the targeting of young students as potential recruits by white supremacist organizations”.⁶⁹

112. The concrete examples remained consistent throughout the debates: white-power telephone services promoting Jewish conspiracy theories, supremacist hate festivals, Ku Klux Klan recruitment literature in schools, broadsheets saturated with vilification, propaganda depicting racial and religious groups as inferior, and publications inciting hatred or violence.⁷⁰

113. The Minister explained the intended causal mechanism. Hate propaganda “depersonalizes people” and convinces listeners that members of protected classes “should be despised”. The resulting harms were concrete: denial of equal opportunity in employment, housing, goods, and services, and, at the extreme, violence.⁷¹

114. At the same time, the government expressly assured the Legislature that the amendment would not impede policy debate: “There have been concerns that this amendment will impede such expression. It will not. The free and vigorous debate on policies and issues of importance to us as a democratic people is one of our most important and highly cherished traditions”.⁷²

115. The Minister later made the boundary unmistakable: “And it certainly does not eliminate freedom of expression; far from it. It celebrates that freedom around the vigorous debate that we need to be able to have on any and all policy and key issues of the day”.⁷³

116. The categorical nature of the government’s assurances is striking. One government member stated: “No one in his or her right mind would say or support any legislation in this

⁶⁹ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 1 (10 June 1993) at [7056](#) (Hon A Hagen).

⁷⁰ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 1 (10 June 1993) at [7057](#) (Hon A Hagen); British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 12 (22 June 1993) at [7651-2](#) (Hon A Hagen).

⁷¹ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 1 (10 June 1993) at [7057](#) (Hon A Hagen).

⁷² British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 1 (10 June 1993) at [7057-8](#) (Hon A Hagen).

⁷³ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 1 (10 June 1993) at [7059](#) (Hon A Hagen).

House that would have the slightest possible impact upon or infringement of freedom of expression”.⁷⁴

117. The words “slightest possible impact” are unusually emphatic. Legislative rhetoric cannot override the enacted text or the *Charter*, but it is powerful evidence against an interpretation that substantially burdens philosophical and political expression. The government did not tell the Legislature that some undefined degree of interference with ordinary policy opinion was intended or acceptable. It represented that the amendment would have not even the slightest possible impact on freedom of expression, while targeting a separate category of organized hate propaganda. Where the statutory language permits more than one interpretation, the Court should prefer the interpretation consistent with that categorical assurance.

118. Government members repeatedly distinguished the legislation from regulation of ideas, beliefs, opinions, and public debate. One stated that there was “nothing about ideas, nothing about what people believe in”, because the bill was directed at inciting hatred of persons because of who they are.⁷⁵

119. Another government member stated that those claiming the legislation would weaken freedom of expression or prevent free expression in British Columbia were “dead wrong”. The same member then drew the promised line in concrete terms: “We’re not talking about the right to have and hold opinions or to express those opinions, and we’re not talking about academic or public debate. We’re talking about orchestrated, organized attempts to persuade the public at large that a group of individuals, by virtue of their skin, race or religion, is inferior”.⁷⁶

120. That member later reiterated:

So freedom of speech is protected in this country. All of us cherish that freedom of speech and expression. But we on this side of this House do not believe that it is okay for the 50-odd groups that are here to be deliberately distributing hate

⁷⁴ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 1 (10 June 1993) at [7062](#) (U Dosanjh).

⁷⁵ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 1 (10 June 1993) at [7066](#) (D Lovick).

⁷⁶ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 8 (17 June 1993) at [7426](#) (J Pullinger).

propaganda and promoting hateful ideas in an orchestrated, organized way. We don't believe it's okay for those groups to be targeting young people as recruits, or to distribute hate propaganda or have hate hotlines.⁷⁷

121. Read together, these assurances identify the intended contrast: protected opinions, academic discussion, and public policy debate on one side; deliberate and organized hate propaganda, inferiority campaigns, recruitment efforts, and hate hotlines on the other. Mr. Neufeld's expression must be judged under the statutory text, not by analogy alone. But an interpretation that treats his opinions about education policy and gender theory as prohibited because the Tribunal rejected their premises is irreconcilable with the boundary the government repeatedly represented to the Legislature.

122. The threshold was repeatedly described as extreme. The Minister referred to "hate, contempt and vilification of an extreme nature" and to complaints by persons exposed to "extreme hatred and contempt".⁷⁸

123. Committee stage debate preserved the same line. The Minister described protected expression as "the spirited and liberal discussion of significant and difficult policy issues" and contrasted it with material that causes personal damage and influences others to think of protected persons in hateful and contemptuous ways.⁷⁹

124. The Hansard addressed the amendment as a whole, including both independent branches now found in sections 7(1)(a) and 7(1)(b), but its centre of gravity was unmistakably the hatred or contempt branch. The debates' repeated examples of cross burnings, supremacist hate fests, conspiracy propaganda, hate hotlines, recruitment campaigns, inferiority messaging, and extreme vilification apply most directly and forcefully to section 7(1)(b). Mr. Neufeld does not contend that section 7(1)(a) is limited to hate propaganda, requires extreme vilification, or duplicates the test under section 7(1)(b).

⁷⁷ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 8 (17 June 1993) at [7428-9](#) (J Pullinger).

⁷⁸ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 1 (10 June 1993) at [7057-8](#) (Hon A Hagen).

⁷⁹ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 12 (22 June 1993) at [7659](#) (Hon A Hagen).

125. The legislative record nevertheless supplies a common limiting framework for both branches. The Minister expressly stated that a high threshold applied to material indicating discrimination or an intention to discriminate as well as material likely to expose persons to hatred or contempt.⁸⁰ The government’s assurances regarding preserving ideas, opinions, divergent views, and vigorous public policy debate were assurances about the amendment as a whole, not only paragraph (b). Section 7(1)(a) must therefore retain a real connection to discriminatory treatment or intention and cannot be triggered merely by offence, negative beliefs, non-affirmation, or opposition to policies associated with a protected group.

126. The opposition’s committee stage challenge to the phrase “indicates discrimination” confirms that the overbreadth risk under section 7(1)(a) was squarely raised. The government answered by invoking a high threshold, *Charter* protection, jurisprudence, and case-specific merits analysis. That history supports a construction requiring the publication, properly interpreted in context, to indicate discrimination or an intention to discriminate. It does not support converting criticism of ideas, beliefs, paradigms, curriculum, medical practices, or public policy into discrimination through abstract concepts such as “erasure”.

127. This legislative record does not confine section 7 to the identical historical examples discussed in 1993. Rather, it identifies the intended kind, degree, target, and mechanism of prohibited expression. Under section 7(1)(b), the publication must meet the extreme threshold of detestation and vilification. Under section 7(1)(a), it must indicate discrimination or discriminatory intention rather than mere disagreement, offence, or failure to affirm. Neither branch was intended to suppress forceful disagreement about policy, curriculum, medical practices, social theory, or government action.

128. The Tribunal reversed that boundary. It treated disagreement with propositions concerning sex and gender as “existential denial”, criticism of gender ideology as an “insidious veneer”, and advocacy for changes to educational policy as “erasure”. It then used those labels as an interpretive premise in its hatred analysis and to support its asserted connection between the

⁸⁰ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Parl, 2nd Sess, Vol 11, No 12 (22 June 1993) at [7650](#) (Hon A Hagen).

education publications and discrimination under section 7(1)(a).⁸¹ The Legislature said the law was not about ideas, beliefs, opinions, academic debate, or public debate. Despite acknowledging that such debate is permissible, the Tribunal made its characterization of Mr. Neufeld’s ideas central to liability.⁸²

129. Paragraph 274 illustrates the move: the Tribunal recast Mr. Neufeld’s position concerning gender identity and public policy as a debate over whether “transgender” people exist or are entitled to dignity. Mr. Neufeld did not argue that “transgender” people are disentitled to dignity. His challenge to propositions about sex and gender, and to policies said to follow from them, was not an argument that “transgender” people may be denied equal human dignity. By answering that different proposition, the Tribunal failed to explain how the particular publications, rather than the position it falsely attributed to Mr. Neufeld, met the requirements of section 7(1)(a).⁸³

130. The Tribunal went as far as to define “gender ideology” as “whether trans people exist and are entitled to dignity”.⁸⁴ Elsewhere, the Tribunal acknowledged that debate about SOGI education, gender identity, the protections afforded to different groups, and government policy can occur without violating section 7(1)(a).⁸⁵ It could not preserve that freedom in principle, then defeat it in Mr. Neufeld’s case by redescribing his challenge to propositions and policies as a denial that “transgender” people deserve dignity. A change of label is not a finding of discrimination. The Tribunal had to identify what the particular publications said or proposed that crossed the statutory line. Its reasons do not adequately explain that step; instead, the characterization does the work of the statutory test. Paragraph 281 declares that the publications went beyond policy critique because they contain “negative stereotypes and pejorative assumptions” that undermine dignity and discriminate. But that declaration does not explain what distinguishes the impugned opinions from the “disapproval of sexual orientations or gender identities” that paragraph 280 expressly permits. The ensuing analysis at paragraphs 284-90 does not resolve the distinction drawn in paragraph 280; rather, it circularly returns to the “erasure” premise introduced at paragraphs 55-7. The Tribunal thus used the contested characterization to

⁸¹ Merits Decision at paras 55-7, 149-54, 163-7, 279-90.

⁸² Merits Decision at paras 271-5, 280-1.

⁸³ Merits Decision at paras 271-4, 279-90.

⁸⁴ Merits Decision at para 274.

⁸⁵ Merits Decision at para 280.

explain why the publications crossed the statutory line, when that characterization was itself the step requiring explanation.⁸⁶

131. In any event, the government promised that vigorous policy debate would remain protected, notwithstanding opposition warnings that broad language could permit a future tribunal to suppress offensive or minority views and determine which opinions “could not be said”. An interpretation reaching Mr. Neufeld’s policy opinions realizes the abuse the opposition predicted and the government expressly denied would occur.

J. Section 7(1)(a) was interpreted and applied too broadly

132. Section 7(1)(a) prohibits a publication that “indicates discrimination or an intention to discriminate” against a person or protected group. The provision does not prohibit every offensive statement, every denial of a contested proposition, every negative stereotype, or every argument for a policy that may be opposed by members of a protected group. Its text requires an indication of discrimination or an intention to discriminate.

133. The words “indicates discrimination or an intention to discriminate” require a logical connection between the publication and discriminatory treatment or intention. The publication must, properly interpreted in context, indicate that a person or protected class should receive, or is intended to receive, some adverse treatment, exclusion, denial, restriction, or differentiation because of a protected characteristic. It is not enough that the publication expresses a belief the Tribunal rejects, uses language the Tribunal considers offensive, criticizes beliefs or practices associated with a protected group, or advocates changes to public policy that members of the group oppose.

134. The Tribunal’s three-part formulation at paragraph 233 does not explain that statutory connection. It calls the three parts “elements” at paragraph 234, but identifies no authority establishing them as the test under section 7(1)(a). In particular, negative beliefs, stereotypes, or disregard for dignity may inform how a publication is understood in context; they do not themselves establish that it “indicates discrimination or an intention to discriminate”. The

⁸⁶ Merits Decision at paras 55-7, 274, 280-1, 284-90.

Tribunal relied on *Ward* for principles concerning specific harm and the limits of expression, but *Ward* did not interpret this provision. The parties' decision not to address *Ward* did not relieve the Tribunal of explaining why principles from that different statutory setting supplied the elements of liability under section 7(1)(a). Those principles cannot replace an explanation of why each publication, read as a whole, communicates discrimination against persons because of a protected characteristic rather than criticism of an idea, policy, or practice.⁸⁷

135. The Tribunal did not consistently establish the necessary statutory connection for the 24 “Education Publications”.⁸⁸ The reasons repeatedly identify criticism of SOGI 123, gender ideology, “gender-affirming” care, pronoun practices, educational resources, government policy, and the conduct of institutions or activists. But the Tribunal does not consistently identify what discriminatory treatment of any person the publication communicated, who was to receive it, who was to impose it, or how Mr. Neufeld’s words indicated an intention that anyone be denied equal treatment. Opposition to teaching or affirming a proposition is not, without more, an indication that persons associated with that proposition should suffer discrimination.

136. The Tribunal’s references to “visibility”, “recognition”, “respect”, “erasure”, negative beliefs, stereotypes, and disregard for dignity cannot, without more, establish that a publication indicated discrimination or an intention to discriminate.⁸⁹ Those concepts are not substitutes for the statutory requirement itself. A person may criticize an idea, policy, medical practice, educational program, or asserted account of identity without advocating denial of another person’s equal civil status, employment, services, education, or protection under law.

137. Paragraphs 55 to 57 reveal why the Tribunal failed to maintain that boundary. Before its grouped analysis of the 24 Education Publications under section 7(1)(a), the Tribunal announced that disagreement with its account of gender identity amounted to disbelief in “transgender” persons, “existential denial”, attempted “erasure”, and an “insidious veneer” concealing an attack on human beings. It thereby showed its hand. It had already decided that criticism of the

⁸⁷ Merits Decision at paras 23, 231-4; *Ward*.

⁸⁸ Merits Decision at paras 279-89.

⁸⁹ Merits Decision at paras 55-7, 279-90.

underlying propositions was necessarily criticism of persons, and that the distinction Mr. Neufeld relied on was itself evidence of concealed discriminatory meaning.

138. That is not a permissible interpretive premise. It is a distorted and self-confirming way of approaching the statutory concepts. Once criticism of an ideology is defined in advance as denial of the persons associated with it, the required connection to discrimination is never proved; it is assumed. If the speaker denies hostility to persons, that denial becomes the “veneer”. If the speaker identifies ideas or practices as the target, that terminology becomes “erasure”. If the speaker urges policy change, the desired change becomes evidence of exclusion. The framework makes the Tribunal’s conclusion inevitable: it treats criticism of ideas as proof of hostility to persons, and any attempt to distinguish the two as further proof of concealed hostility. There is no answer Mr. Neufeld could give within that framework that could rebut the allegation. It is a Kafka trap.⁹⁰

139. The problem is a fatal legal error because paragraphs 55 to 57 were not isolated rhetorical flourishes. They became the interpretive lens for the later findings under sections 7(1)(a), 7(1)(b), and 13. A reasonable decision had to remain open to the possibility that a publication criticized ideas, institutional practices, curriculum, medical intervention, or government policy without indicating discrimination against persons. The Tribunal instead foreclosed that possibility at the outset and then read the publications through the conclusion it had already adopted.

140. The Tribunal’s analysis of each publication found unlawful under section 7(1)(a) must identify:

- a. what treatment, exclusion, denial, restriction, or adverse action the publication, properly interpreted in context, advocates or indicates, including any concrete step it calls upon another person to take;
- b. which person or protected class is to receive that treatment;
- c. who is urged or intended to impose it;

⁹⁰ See Kafka, Franz. 1999. *The Trial*. New York, NY: Schocken Books.

- d. how the protected characteristic is connected to the proposed treatment; and
- e. whether the publication indicates discriminatory treatment rather than criticism of an idea, policy, practice, institution, or asserted factual proposition.

141. The Tribunal’s grouping of 24 publications as “Education Publications”, combined with generalized findings of erasure, exclusion, and failure to affirm, did not answer those questions. It extended section 7(1)(a) from publications indicating discrimination to expression the Tribunal regarded as undermining recognition or respect.⁹¹

142. The Tribunal itself made a concrete real-world connection decisive when it dismissed the six non-education publications. It held that, although those publications contained discriminatory language, they did not express an intention to effect real-world harms, call on others to do so in a concrete way, cause a discriminatory effect, or have a likely discriminatory effect; any prospect of harm was too remote to engage section 7(1)(a).⁹²

143. Notwithstanding its finding that Mr. Neufeld “likely hopes” his publications will influence public policy and, “in this sense, ‘intends’ a discriminatory outcome”, the Tribunal found that “his influence is too remote to find that...he intends to discriminate (i.e. effect real-world harm)”.⁹³ The Tribunal was entitled to consider remoteness and proportionality. But section 7(1)(a) asks whether the publication indicates discrimination or an intention to discriminate—not whether the speaker had enough influence to bring about discriminatory harm. The Tribunal could not equate an intention to influence public policy with an intention to discriminate, then make the existence of that intention turn on whether the hoped-for outcome was too remote to occur.

144. Analytical consistency was required between the non-education publications and the Education Publications. Having distinguished a hope to influence policy from statutory intention in the six non-education publications, the Tribunal was required to explain how the words and

⁹¹ Merits Decision at paras 279-90.

⁹² Merits Decision at paras 275-8.

⁹³ Merits Decision at para 275.

context of each Education Publication indicated an intention to discriminate against members of the Class, rather than merely a hope to change education policy. The education backdrop and Mr. Neufeld's office as a trustee were relevant context, not substitutes for an analysis of how each Education Publication itself indicated discrimination or an intention to discriminate. Moreover, the reasons do not consistently explain why that context transformed policy expression into a proper target of legal sanction rather than increasing the constitutional importance of protecting political debate. The education distinction cuts both ways. To the extent a publication addressed public education policy, that context also engaged the democratic value of debate about what public schools should endorse, accept, and inculcate. The Tribunal relied on the education connection as a reason for liability, but its abstract discussion of section 2(b) did not explain how it weighed the expressive value of each publication when deciding that the same connection supported liability.⁹⁴

145. Further, having relied on the remoteness of a concrete real-world effect to dismiss the section 7(1)(a) allegations concerning six publications, the Tribunal did not adequately explain why the words and context of each Education Publication crossed the statutory line. The Tribunal also relied on the audience's "discernment and critical judgment" to dismiss the six publications, but did not explain why that same safeguard could not mitigate the harm it attributed to each Education Publication. Those differences in treatment matter constitutionally. Philosophical and political expression concerning public education lies close to the core of section 2(b). A legally correct interpretation must preserve room for forceful, unpopular, and offensive contributions to public debate unless the publication indicates discrimination or an intention to discriminate against the Class.

146. The Court should hold that the Tribunal adopted an overbroad legal conception of that line and dismiss the section 7(1)(a) allegations where that result is legally inevitable, or otherwise remit them for determination under a properly confined test.⁹⁵

147. The education/non-education divide also exposes the Tribunal's inconsistent approach to section 7(1)(a). The October 20, 2020 Board statement expressly said that Mr. Neufeld objected

⁹⁴ Merits Decision at paras 235-40, 275-90.

⁹⁵ Merits Decision at paras 240, 275-90.

only to parts of SOGI and to ideas in a document, yet the Tribunal treated the statement as a whole as discriminatory without explaining how its criticism of the curriculum and those ideas indicated discrimination against members of the Class. The October 22, 2018 post told persons identifying as gay, lesbian, bisexual, transgender and/or queer that they had nothing to fear, condemned bullying, and professed care for all students, yet was also found discriminatory without an explanation of how those assurances were weighed against the other language in the post. Conversely, the Tribunal dismissed six non-education publications because Mr. Neufeld's influence and any resulting harm were too remote. The question was not whether the two Education Publications contained language the Tribunal considered objectionable; it was how their words, read as a whole and in context, indicated discrimination or an intention to discriminate against the Class. The Tribunal used subject matter and office as proxies for discriminatory meaning, rather than explaining that publication-specific connection.⁹⁶

K. The Tribunal did not consistently maintain the high threshold under section 7(1)(b)

148. Mr. Neufeld accepts that *Whatcott* is binding on this Court. Correctness applies directly under section 59(1) of the *ATA* to the identification and interpretation of the legal test under section 7(1)(b). Mr. Neufeld's primary submission is that, properly understood, *Whatcott* does not authorize the Tribunal to use the so-called "hallmarks of hate" as proxies for the governing test, to establish liability by cumulative tally, or to displace the required contextual assessment of whether a publication is likely to expose persons to detestation and vilification. If, contrary to Mr. Neufeld's primary submission, *Whatcott* is held to authorize that methodology, Mr. Neufeld preserves for appellate review the submission that *Whatcott* should be reconsidered to that extent. Although the Tribunal stated that the hallmarks were not a checklist, its treatment of the six unlawful publications and its explanation that materially similar hallmarks in other publications were "diluted or tempered" show that the hallmarks functionally supplied its conclusion.⁹⁷

149. *Whatcott* confines hate speech liability to unusual and extreme expression that, viewed objectively and in context, exposes the target group to detestation and vilification. The restriction

⁹⁶ Merits Decision at paras 275-90; Appendix A, items 7, 15 at paras 24-6, 44-5.

⁹⁷ Merits Decision at paras 144, 167-207.

is constitutionally supportable only because this demanding threshold filters out expression that is repugnant, offensive, derogatory, insulting, belittling, humiliating, or dismissive but does not generate the extreme abhorrence, delegitimization, and rejection that risks discrimination or other harmful effects. The repugnancy of the ideas expressed is not itself sufficient.⁹⁸

150. Mr. Neufeld’s impassioned expression of his belief that biological sex is immutable and his unapologetic opposition to teaching children gender ideology are not likely to expose “transgender” persons to hatred or contempt. Calling that belief “existential denial” does not establish the likely effect of its expression on an audience. Disagreement with that belief may be profound, and its expression may offend, distress, or anger. Those reactions do not satisfy the statutory threshold.⁹⁹

151. The Supreme Court’s own formulation addresses the subject matter directly. *Whatcott* confirms that Mr. Whatcott and others remained “free to preach against same-sex activities, to urge its censorship from the public school curriculum and to seek to convert others to their point of view”. Their “freedom to express those views is unlimited, except by the narrow requirement that they not be conveyed through hate speech”: *Whatcott* at para 163. Mr. Neufeld was likewise entitled to oppose ideas and practices, urge their removal from public school instruction, and seek to persuade others. The question was only whether the manner of expression crossed the narrow line into hate speech.

152. *Whatcott* itself shows the difference. The publications found unlawful—entitled “Keep Homosexuality out of Saskatoon’s Public Schools!” and “Sodomites in our Public Schools”—portrayed gay and lesbian persons as a menace to children, directly linked them to disease, pedophilia, sexual abuse, and predation, used degrading and dehumanizing epithets such as “filth”, “dirty”, and “degenerated”, invoked biblical authority to validate those generalizations, and expressly urged that civil law discriminate against homosexuals and lesbians. The flyers thus directed their school-related message against homosexual and lesbian persons—not merely against a pedagogical proposition and the government or institutional actors championing it—

⁹⁸ *Whatcott* at paras 41, 43, 48, 56-9.

⁹⁹ *Whatcott* at paras 41, 50-2, 56-9.

and coupled that message with extreme vilification and an express call for discriminatory treatment. That combination crossed the constitutional line.¹⁰⁰

153. *Whatcott* divulges the kinds of language and features that moved two out of four of Mr. Whatcott's flyers into detestation-and-vilification territory. Mr. Whatcott's flyers also clearly identified the protected target: homosexuals. For example, the sentence "Sodomites are 430 times more likely to acquire Aids & 3 times more likely to sexually abuse children!" on a flyer targeting "Sodomites in our Public Schools" leaves no doubt concerning who is being targeted, whether or not that person or group is protected, and of what that targeted person or group stands accused.¹⁰¹ A flyer entitled "Sodomites in our Public Schools" which states, "Sodomites are 430 times more likely to acquire Aids & 3 times more likely to sexually abuse children!" is a statement that homosexuals in public schools are relatively likely to carry a deadly and transmissible disease and to sexually abuse children.

154. *Whatcott* also dealt with what is not sufficient to cross the legal boundary into "hate speech". The *Whatcott* court found Mr. Whatcott's insinuation that advertisements placed by homosexual men are "a means by which pedophiles can advertise for victims" fell short of "expressing detestation or vilification in a manner that delegitimizes homosexuals", even when coupled with the biblical passage stating "if you cause one of these little ones to stumble it would be better that a millstone was tied around your neck and you were cast into the sea". Further, even if the words were read as "calling for homosexuality to be illegal", they did not supply the missing vilification; nor could evidence of "a pattern or practice of disregard of rights secured under the *Code*" make those flyers unlawful. *Whatcott* illustrates how the kind of delegitimization that triggers the hate speech provision adds or focuses on the inherent dirtiness, filthiness, degeneracy and disease of persons who are themselves homosexuals.¹⁰²

155. *Whatcott* also makes an important point about the target of publications at paragraph 177: "If Mr. Whatcott's message was that those who engage in sexual practices not leading to procreation should not be hired as teachers or that such practices should not be discussed as part

¹⁰⁰ *Whatcott* at paras 8, 176-7, 182-93.

¹⁰¹ *Whatcott* at paras 8, 183, 189-90.

¹⁰² *Whatcott* at paras 187-90; 194-202.

of the school curriculum, his expression would not implicate an identifiable group”. Had Mr. Whatcott aimed his criticism at anyone who engages in sodomy, including heterosexuals, he would not have run afoul of hate legislation. In other words, the Tribunal could not turn Mr. Neufeld’s criticism of educational practices and those promoting them into hatred of persons identifying as transgender, let alone the Class of complainants, without establishing that his publications actually directed the impugned accusation at those protected persons.

156. The Tribunal’s proxy analysis collapses the distinction that *Whatcott* requires. *Whatcott* did not hold that criticism of an activity, policy, school curriculum, or institutional actor automatically targeted protected persons. The unlawful flyers went further: they targeted homosexual and lesbian persons with dehumanizing accusations, portrayed them as predatory dangers to children, and advocated that civil law discriminate against them. By treating criticism of gender ideology, educational resources, medical practices, or institutional policy and actors as a proxy attack on protected persons without establishing how each publication directed its impugned accusation at specifically those persons, the Tribunal collapsed the distinction between expression about contested public questions and expression that actually exposes protected persons to detestation and vilification.

157. Additionally, none of the six publications called for violence, harassment, intimidation, or unlawful exclusion of “transgender” persons.¹⁰³ Those features are not indispensable legal elements of hate speech, and their absence is not conclusive. It is nevertheless highly relevant when the Tribunal seeks to characterize political and educational advocacy as extreme detestation and vilification. The absence of any call to attack, harass, intimidate, or unlawfully exclude persons identifying as transgender is another factor tending to weigh against a finding that the publications crossed *Whatcott*’s narrow line.

158. *Whatcott* did not make the hallmarks statutory elements or an autonomous legal test. It referred to the examples collected in *Warman v Kouba* as “types of expression and devices” that had appeared in earlier hate speech cases. The controlling inquiry remained whether the publication as a whole, in its full context, meets the extreme threshold of detestation and

¹⁰³ Merits Decision at paras 167-207.

vilification.¹⁰⁴ That inquiry must concern a group targeted on a protected ground, not a proxy substituted for that group. The Class consists of CTA teachers who identify as gay, lesbian, bisexual, transgender and/or queer. A teacher does not become a member of that Class merely by promoting SOGI 123. Nor does targeting a promoter of SOGI 123 who does not hold the protected characteristic alone establish discrimination against the Class.¹⁰⁵

159. The hallmarks become constitutionally dangerous when treated as proxies for the conclusion. Many are generic features of ordinary advocacy about a perceived threat: asserting that a movement is powerful; warning that it influences institutions; alleging harmful consequences; relying on sources claimed to be authoritative; using urgent language; appealing to shared values; identifying vulnerable persons said to require protection; or urging lawful action. These are commonplace forms of political, moral, scientific, religious, and consumer advocacy. They describe how reasonable people routinely communicate about policies, institutions, products, practices, viewpoints, and movements they regard as dangerous. Standing alone or in combination, the presence of those features does not itself distinguish hatred from emphatic opposition.

160. An analysis driven by such broad indicators is circular and vulnerable to confirmation bias. Once an adjudicator characterizes the subject of criticism as inseparable from a protected group, virtually every warning about the criticized idea or practice can be relabeled a “powerful menace”, “threat to children”, “recruitment or contagion”, “dehumanization”, “reputable source”, or “call to action” hallmark. The same expression is then used both to identify the hallmark and to establish the ultimate conclusion of hatred. That method risks replacing the objective statutory threshold with the adjudicator’s assessment of whether the underlying concern is legitimate.

161. The Tribunal stated, but did not give operative effect to the proposition, that the hallmarks are not a checklist and that a publication may contain them without constituting hate speech,¹⁰⁶ as illustrated by its treatment of *Elmasry and Habib v Roger’s Publishing and MacQueen (No. 4)*.¹⁰⁷ Mr. Neufeld showed that the publication in *Elmasry* contained numerous

¹⁰⁴ *Whatcott* at paras 44, 56-9.

¹⁰⁵ *Whatcott* at paras 176-7.

¹⁰⁶ Merits Decision at paras 144, 203-7.

¹⁰⁷ [2008 BCHRT 378](#) [*Elmasry*].

hallmarks identified in the later jurisprudence, yet the Tribunal there held that exaggeration and fomenting fear of Muslims did not establish hatred or contempt.¹⁰⁸ Rather than treating that result as proof that the hallmarks do not themselves establish hatred or contempt, the Tribunal speculated that *Elmasry* might have been decided differently after *Whatcott*.¹⁰⁹ That speculation could not displace either *Elmasry*'s actual holding or *Whatcott*'s insistence on the ultimate contextual inquiry. *Elmasry* demonstrates why the presence of rhetorical features associated with hate speech cannot substitute for proof that the publication, as a whole, is likely to expose the target group to detestation and vilification.¹¹⁰

162. The Tribunal then supplemented the established hallmarks with subject-specific themes: denial or “erasure” of “transgender” identity; deceiver or pretender tropes; recruitment or contagion; threats to children or social order; criticism of “gender-affirming” care; and association with abuse or predation.¹¹¹ This did not improve the Tribunal’s rationale. Some forms of expression associating a protected class with child abuse may plainly contribute to vilification. But criticism of an ideology, paradigm, educational program, medical intervention, institutional practice, or claimed effect on children cannot become hate speech merely because the criticism is forceful, alarming, or rejected by the Tribunal. The analysis must first identify the actual target and then determine whether the publication, as a whole, exposes protected persons—not an idea, policy, practice, institution, or movement—to extreme detestation and vilification.

163. The Tribunal’s reliance on *Whatcott* at paragraph 124 equated two connections it had not shown to be equivalent. *Whatcott* identified a strong connection between sexual orientation and sexual conduct. The Tribunal did not make a comparably firm finding about “gender-affirming” medical care: it said access to that care “may” be crucial to “transgender” identity and that attacking treatment “may”, “in some cases”, be a proxy for attacking “transgender” people.¹¹² That hedging matters. A possibility that treatment may be crucial to some persons’ identity does not establish that criticism of the treatment targets “transgender” people in a particular

¹⁰⁸ *Elmasry* at paras 150-7.

¹⁰⁹ Merits Decision at paras 141-3.

¹¹⁰ *Whatcott*, 2013 SCC 11 at paras 44, 56-9.

¹¹¹ Merits Decision at paras 145-55.

¹¹² Merits Decision at para 155.

publication. Nor did *Whatcott* treat the connection between conduct and identity as the end of the inquiry: the expression still had to be framed so as to expose protected persons to extreme detestation and vilification.

164. The Tribunal’s foundational conclusion that the distinction between “gender ideology” and persons was an “insidious veneer” impaired the required analysis.¹¹³ It effectively predetermined that criticism of the asserted ideology targeted persons identifying as transgender themselves. Once that premise was adopted, the generic hallmarks did little more than confirm it. The Court should hold that the hallmarks cannot create presumptions, establish cumulative liability by tally, or relieve the Tribunal of determining whether each publication, viewed objectively and as a whole, crossed *Whatcott*’s extreme threshold. The six findings should be set aside because, among other things, the Tribunal treated rhetorical devices or disputed characterizations as substitutes for detestation, vilification, and the potential for discriminatory treatment.

165. The Tribunal’s practice of target substitution is clearest in item 10. The publication alleges that “elites” perpetrate a “trans agenda”, cull gay children from the gene pool, and are “snakes”.¹¹⁴ A “trans agenda” is an asserted political or ideological project; it is not a protected person or class. Nor are “elites” a protected class under the *Code*. The Tribunal nonetheless applied the hallmarks to the alleged conduct and characteristics of “elites”, then concluded that the publication exposed “transgender” persons to hatred. It did not explain what in this publication made “elites” a reference to “transgender” persons, rather than the alleged proponents of an agenda said to threaten gay children. That is not contextual interpretation. It is target substitution. The Tribunal’s alchemy was accomplished over five paragraphs: at paragraph 173, it correctly identified “elites” as the persons alleged to be pushing an idea; by paragraph 177, it had switched the target to “trans people”.¹¹⁵ Further, the Tribunal’s treatment of this publication calls into question its stated methodology of finding no violation of 7(1)(b) where Mr. Neufeld’s publications were capable of more than one interpretation.¹¹⁶ It never explained

¹¹³ Merits Decision at paras 55-7.

¹¹⁴ Merits Decision, Appendix A, item 10 at paras 32-3.

¹¹⁵ Merits Decision at paras 172-7.

¹¹⁶ Merits Decision at para 165.

why “snakes are everywhere” could not refer to the “elites” the publication had just named, rather than to people who identify as transgender.

The mixed outcomes expose an arbitrary and impressionistic threshold

166. The Tribunal’s dismissal of some hate speech allegations does not cure its methodology. It exposes its indeterminacy. The reasons acknowledge that the publications found lawful had “many similarities” with those found unlawful and also contained expression the Tribunal characterized as bearing hallmarks of hate, including denial or erasure, deceiver or pretender tropes, recruitment or contagion, threats to children and social order, supposedly dehumanizing descriptions of “gender-affirming” treatment, and references to allegedly reputable sources or true stories.¹¹⁷

167. If substantially the same hallmarks appear on both sides of the legal line, their presence does not identify the line. The hallmarks have little analytical force unless the reasons explain what additional feature converts a rhetorical device common to lawful advocacy into proof of extreme detestation and vilification. The Tribunal discussed differences in tone, including punctuation marks it treated as significant, but did not explain how those differences moved a publication into “extreme detestation and vilification” territory. The distinction remained at a level of abstraction that rendered no legally discernible threshold.¹¹⁸

168. The Tribunal said dilution or tempering arose from length, thesis, target, tone, oblique language, or concern for children and other vulnerable people.¹¹⁹ Each consideration may be relevant. But the reasons do not explain:

- a. how each factor changes the objectively communicated meaning;
- b. what weight the factor receives;
- c. why it saves one publication but not another;
- d. how much dilution is sufficient;
- e. what remains after dilution; or

¹¹⁷ Merits Decision at paras 203-4.

¹¹⁸ Merits Decision at paras 167–207.

¹¹⁹ Merits Decision at paras 204-5.

f. what decisive feature moves a publication across *Whatcott*'s extreme threshold.

169. “Diluted” and “tempered” are descriptions of an overall impression, not an intelligible legal criterion.

170. The treatment of concern for children is internally unstable. In some lawful publications, the Tribunal treated Mr. Neufeld's expressed concern for children as a factor militating against a finding of hatred, and distinguished warnings directed at policies or practices from accusations directed at persons identifying as gay, lesbian, bisexual, transgender and/or queer. In the unlawful publications, warnings about children were treated as evidence of powerful menace, recruitment, contagion, predation, grooming, and danger to social order. The reasons needed to explain why concern for children tempered the message in one publication but helped establish hatred in another—not simply attach opposite significance to the warning after deciding whom it targeted.¹²⁰

171. A principled analysis had to explain when concern for children identifies the actual target as curriculum, medical intervention, institutional policy, or another practice, and when it becomes a device exposing protected persons to extreme detestation. The Tribunal did not articulate a stable criterion. Paragraphs 55 to 57 made the instability worse: if the ideas/persons distinction was already an “insidious veneer”, an expression of concern for children remained open to reclassification as concealed hostility any time the panel found a publication sufficiently objectionable.¹²¹

172. Ranking publications according to directness, virulence, concentration, or forcefulness does not solve the problem. Section 7(1)(b) does not prohibit the worst items in a respondent's body of work. It prohibits only publications that independently satisfy the extreme *Whatcott* threshold. The question was not which publications were worse than the others. It was whether each publication objectively exposed protected persons to detestation and vilification and had the potential to lead to discriminatory treatment.

¹²⁰ Merits Decision at paras 167-207.

¹²¹ Merits Decision at paras 203-5.

173. The Tribunal’s statement that Mr. Neufeld was “adept”, consciously or subconsciously, at stopping “just before the threshold of hate” is revealing.¹²² Saying that some publications stopped immediately before a threshold does not identify the threshold. It confirms that the boundary remained invisible. The reasons never precisely identify the legally material difference between the near-threshold publications and the six unlawful ones that pushed the latter into “extreme detestation and vilification”.

174. Further, the Tribunal claimed that where it could find an alternate meaning, it did so. The Tribunal found that Mr. Neufeld’s “rhetoric is not as direct as some of the other hate speech cases we have canvassed, and the target of his speech is not always clear. To the extent any of his publications are capable of more than one interpretation, we have found they do not violate section 7(1)(b)”.¹²³ However, that approach was not applied consistently to the publications found unlawful. A publication criticizing “gender ideology”, an educational practice, or another asserted idea or policy was capable of being read as targeting that subject rather than people identifying as transgender. Selecting the “insidious veneer” reasoning instead of an available alternative interpretation did not live up to the Tribunal’s stated methodology of declining to find liability where a publication was capable of more than one interpretation.

175. Functionally, the Tribunal employed an undefined critical-mass methodology:

- a. identify broad and generic hallmarks;
- b. assess their number, intensity, and accumulation;
- c. decide whether context sufficiently dilutes or tempers them;
- d. form an overall impression of tone, target, directness, and virulence; and
- e. announce whether the invisible and unknowable line has been crossed.

176. No principle explains how many hallmarks are enough, whether some count more than others, how context offsets them, when concern for children is exculpatory, or what turns criticism of ideas and practices into vilification of persons. This cannot function as a lawful application of the statutory test. It is a discretionary gestalt wrapped in legal vocabulary.

¹²² Merits Decision at para 165.

¹²³ Merits Decision at para 165.

177. The selective outcomes may therefore make the reasoning more—not less—problematic. Had the Tribunal mechanically accepted every conclusion flowing from Dr. Saewyc’s framework, the legal error would at least be transparent. Instead, it combined uncritically adopted foundational premises with impressionistic exceptions. The result gives no reproducible rule explaining why one publication is lawful and another, containing the same themes and hallmarks, attracts legal liability.

178. That indeterminacy is constitutionally grave. A person participating in political and policy debate cannot conform expression to the law if liability turns on whether a tribunal later concludes that generic hallmarks accumulated sufficiently, were not adequately diluted, felt sufficiently virulent, or crossed a threshold that similar publications supposedly approached but did not cross. The predictable consequence—perhaps even an intended one—is self-censorship. Speakers will avoid lawful discussion because the boundary between protected advocacy and prohibited hate speech is visible only after an adjudicator arbitrarily announces an overall impression.

179. The concern is not that similar publications necessarily had to receive identical outcomes. Context can support principled distinctions. The defect is that the Tribunal did not provide a rational, transparent, and reproducible explanation for the distinctions it drew. For a restriction on core political and philosophical expression, liability cannot turn on *vibe-of-the-thing* reasoning used to subjectively determine whether the publication feels sufficiently hateful to the adjudicator.

180. A publication-by-publication comparison confirms that the line drawn under section 7(1)(b) was not principled. Several publications found not to be hate speech contained language at least as harsh, direct, personalized, or dignity affecting as publications found unlawful:

- a. the November 21, 2017 Culture Guard speech called gender identity “sexual addiction”, characterized SOGI as “gaslighting” and “child abuse”, warned about transition, and predicted suicide, yet the Tribunal found that it was a critique of curriculum and the school system’s approach rather than an incitement to hate;

- b. the March 19, 2018 post attacked transition as a “charade”, described treatment in graphic terms, and accused medical professionals and activists of coercion, yet violated neither branch because the Tribunal found that any resulting harm was too remote;
- c. the November 17 and 20, 2018 publications associated gender dysphoria with autism, mental illness, childhood abuse, trauma, recruitment, sterility, and mutilation, but the Tribunal found that they were rooted in concern for vulnerable children and called for “caring, loving, and compassionate therapy”, not hatred;
- d. the April 14, 2022 interview associated teachers identifying as “LGBT” with grooming and sex offenders, urged restrictions on teaching about gender identity and sexual identity, and stated that there was “no such person as a transgender”, yet the Tribunal found that its broader focus on SOGI and asserted concern for children prevented a finding of hate speech;
- e. the May 10, 2022 interview characterized gender identity as a lie, described children as confused and manipulated, and treated preferred pronouns as evidence of that manipulation, yet the Tribunal found that it expressed an opinion about what children should be taught;
- f. the May 11, 2022 post described “gender-affirming” treatment in terms of mutilation and castration, asserted that there would be “No transgender persons in the Kingdom of God”, and called on Christians to oppose gender transition surgery, yet the Tribunal found that it did not expose “transgender” persons to detestation or vilification;
- g. the May 17, 2022 post describes educators as pushing the “strange, new twisted religion” of “gender ideology” in schools “without parental awareness or consent”, with a comparison to “Indian Residential schools”, yet the Tribunal found that it did not violate section 7(1)(b); and
- h. the September 24, 2022 interview repeatedly referred to “dangerous grooming ideology”, transgender activists, gender transition practices, secrecy from parents, and asserted

threats to children and families, yet the Tribunal found that it did not violate section 7(1)(b).¹²⁴

181. Those comparators demonstrate that offence, harshness, denial, deception, delusion, personalized targeting, and even advocacy for a policy adverse to protected persons were not themselves sufficient to establish hate speech. Four of the six publications found to violate section 7(1)(b) also formed part of the Education Publications. Their connection to public education and Mr. Neufeld’s office as trustee could inform the contextual analysis, but could not substitute for it. The reasons still had to establish, for each of the six publications, that it objectively exposed protected persons to detestation and vilification and had the potential to lead to discriminatory treatment.

182. A reasonable person aware of the full context—including the political and educational subject matter, the identified institutional targets, the necessary distinction between persons and ideas, the absence of a call for violence or unlawful exclusion of “transgender” persons, express limiting language, and reasonably available non-hateful meanings—would not understand Mr. Neufeld’s expression of his beliefs as likely to expose “transgender” persons to detestation and vilification. The Tribunal reached the contrary conclusion only by ignoring exculpatory context, stretching generic hallmarks beyond their legitimate function, and using the arbitrary interpretive premises announced in paragraphs 55 to 57 to shoehorn policy expression into hate speech.

L. Section 13 required a more disciplined connection to employment

183. Section 13 prohibits discrimination “regarding employment”. Section 1 of the *Code* expressly defines the statutory subject matter:

“employment” includes the relationship of master and servant, master and apprentice and principal and agent, if a substantial part of the agent’s services relate to the affairs of one principal, and “employ” has a corresponding meaning.

184. The definition is inclusive rather than exhaustive. It nevertheless matters. Every relationship the Legislature expressly identified remains a recognizable work or service

¹²⁴ Merits Decision at paras 203-27; Appendix A, items 2, 5, 9, 12, 21-4, 28 at paras 4-9, 16-21, 29-31, 36-7, 60-77, 85-93.

relationship involving occupational engagement, the performance of services, or a legally structured relationship connected to work.

185. The definition does not identify elected public office, political advocacy, public criticism of government policy, theoretical influence over a corporate board, or controversy concerning an institution as forms of employment. Nor does it treat an individual trustee as the employer, principal, supervisor, co-worker, contractor, or workplace service participant of employees in relation to whom only the Board may exercise the Board's rights, duties, and powers, as section 65(3) of the *School Act*¹²⁵ confirms. Those facts matter to whether a trustee's public expression bears the sufficient employment connection that section 13 requires.

186. Under *British Columbia Human Rights Tribunal v Schrenk*,¹²⁶ liability is not confined to an employer, formal superior, or person who shares the complainant's employer. Mr. Neufeld therefore does not argue that his non-employer status is dispositive or that section 1 exhaustively identifies every possible respondent. But *Schrenk* did not displace the *Code*'s definition of "employment" or detach section 13 from its statutory subject matter. It involved discriminatory conduct within a shared worksite and a common work enterprise. Mr. Neufeld's impugned expression occurred in public communications and at Board meetings: political and governance forums, not the Class members' workplace. *Schrenk* does not erase the requirement for a sufficient nexus to employment or make a trustee's public political expression discrimination "regarding employment" without a demonstrated connection to the Class members' actual work environment, employment relationship, or term or condition of employment.¹²⁷

187. The definition therefore reinforces the required limiting principle. A connection to public education, elected governance, political influence, or workplace controversy is not a connection to employment. The Complainant must still prove an adverse impact with a sufficient connection to the Class members' actual employment relationship or employment context, work

¹²⁵ [RSBC 1996, c 412](#) [*School Act*].

¹²⁶ [2017 SCC 62](#) [*Schrenk*].

¹²⁷ *Schrenk* at paras 3-5, 37-8, 67-9.

environment, or term or condition of employment, and must prove that the protected characteristic was a factor in that employment-related adverse impact.¹²⁸

The Tribunal treated the employment nexus and adverse impact finding as mutually self-confirming

188. The Tribunal treated three matters as mutually reinforcing: Mr. Neufeld’s status as a trustee, the educational subject matter of many publications, and its finding that the publications permeated and adversely affected the workplace. The latter finding was itself contested. Although workplace impact may be relevant both to the employment nexus and to adverse impact, the Tribunal was required to explain each inquiry independently. Instead, it invoked alleged workplace harm as a material basis for the nexus and then treated the asserted nexus as confirming that the same harm was discrimination “regarding employment”. The reasons do not disclose a non-circular path from the evidence to each required conclusion.¹²⁹

189. The Tribunal had to address three analytically distinct questions:

- a. whether the alleged conduct bore a sufficient nexus to the Class members’ actual employment relationship or employment context;
- b. whether the conduct caused or contributed to an adverse impact related to or associated with employment; and
- c. whether sexual orientation, gender identity, or gender expression was a factor in that employment-related adverse impact.¹³⁰

190. The fact that a publication concerns schools or teachers may support context. It does not prove that the publication altered a term or condition of employment, poisoned a workplace, or caused a Class member an employment-related disadvantage.¹³¹

¹²⁸ *Schrenk* at paras 37-8, 67-9; *Moore v British Columbia (Education)*, [2012 SCC 61](#) [*Moore*] at para 33.

¹²⁹ Merits Decision at paras 67-70, 91-6.

¹³⁰ *Schrenk* at paras 3, 37-8, 67-9; *Moore* at para 33.

¹³¹ *Schrenk* at paras 37-8, 67-9.

191. *Schrenk* involved far more than public expression connected generally to a workplace. The respondent was a site foreman on the same construction project, an integral and unavoidable part of the complainant’s work environment. His repeated discriminatory conduct occurred at the worksite and forced the complainant to endure affronts to his dignity while at work. Those facts established the sufficient nexus in *Schrenk*. They are materially different from public communications, political rallies, and Board meetings that teachers were not required to attend and could avoid without foregoing their work. Treating Mr. Neufeld’s situation as analogous to *Schrenk* ignores the fact-specific basis on which the Court held the impugned conduct was discrimination “regarding employment”: a compulsory, shared work environment in which the complainant necessarily encountered the respondent’s conduct as part of doing the job.¹³²

192. Mr. Schrenk’s communications were also specifically directed to the complainant. He spoke directly to Mr. Sheikhzadeh-Mashgoul at the worksite and later sent him two personal derogatory emails.¹³³

193. The Tribunal acknowledged that, apart from Board meeting statements, most publications did not directly occur in the workplace. Even that misstates the reality. Board meetings were not the workplace of teachers, bringing the number of alleged workplace incidents to zero. The Board meetings were themselves political and governance forums, as distinct from the Class members’ workplace. The Tribunal nevertheless considered it most significant that the publications had “permeated and poisoned” the work environment—the very proposition it later purported to prove. Correct interpretation requires the sufficient nexus inquiry to constrain section 13 before the Tribunal reaches the ultimate adverse impact finding, not to be satisfied by assuming that finding.¹³⁴

Mr. Neufeld’s individual authority over employment was non-existent

194. Mr. Neufeld was one member of an elected Board. The Tribunal expressly accepted that the Board as a whole—not an individual trustee—exercised authority over teachers’ employment

¹³² *Schrenk* at paras 4-11, 67-9.

¹³³ *Schrenk* at paras 8-11.

¹³⁴ Merits Decision at paras 67-70, 91-6.

and that a single trustee could not exercise the Board’s statutory rights, duties, or powers.¹³⁵ Indeed, Mr. Neufeld could not independently exercise the Board’s rights, duties, or powers in relation to teachers’ employment or Board policy, nor unilaterally bind the Board to a position he advocated.¹³⁶

195. The Tribunal identified no discriminatory employment decision made by Mr. Neufeld, no policy he caused the Board to adopt, no direction he issued to a Class member, and no exercise of statutory authority altering anyone’s employment.

196. The institutional evidence pointed in the opposite direction. The Board publicly rejected Mr. Neufeld’s position, asked him to resign, expressed loss of confidence in his ability to perform his duties, and removed his school liaison responsibilities so he would not be physically present in District schools. The Minister, Board, CTA, BCTF, administrators, and other institutional actors opposed his position.¹³⁷ Teachers remained governed by Board policy, legislation, collective agreements, and administrative direction—not by Mr. Neufeld’s personal views.

197. Formal membership on a governing body cannot, without a reasoned explanation of actual workplace effect, substitute for proof of a sufficient nexus between Mr. Neufeld’s conduct and the Complainant’s actual employment context.¹³⁸ The Tribunal failed to justify its findings that Mr. Neufeld was “integral” to the workplace and “uniquely situated” to alter working conditions.

Political influence and public profile are not control over working conditions

198. The Tribunal relied on Mr. Neufeld’s Board vote, his capacity to influence other trustees, his public profile, and the fact that many statements concerned education. But political influence is not itself employment control or proof of employment-related impact. Every elected member may attempt to persuade colleagues, constituents, or government, including through expression

¹³⁵ Merits Decision at para 75.

¹³⁶ *School Act* at sections 15(1)-(3), 65(3).

¹³⁷ Merits Decision at paras 103-4.

¹³⁸ Merits Decision at paras 74-81; *Schrenk* at paras 37-8, 67-9.

in public communications and Board meeting political forums. Treating that ordinary political capacity, without more, as sufficient employment connection would expose individual legislators, councillors, trustees, and board members to employment discrimination liability whenever their public advocacy concerns the work of employees under the institution's jurisdiction.¹³⁹

199. The proper inquiry is practical and case-specific:

- a. Did Mr. Neufeld cause the Board to adopt a discriminatory policy or employment decision?
- b. Did his vote determine any discriminatory outcome?
- c. Did he issue or procure a direction governing a Class member's work?
- d. Did he alter any Class member's pay, duties, security, evaluation, access, or workplace status?
- e. Did the institution implement the policy outcome he advocated?

200. The Tribunal did not identify any such exercise of control. It moved instead from public profile and subject matter to workplace integration, and from controversy to adverse impact.¹⁴⁰

201. The content of a publication can strengthen a genuine employment nexus, but it cannot create one merely because it discusses teachers, curriculum, or schools. Public education is also a matter of democratic governance and political debate. A rule that every forceful statement by a trustee concerning education is conduct "regarding employment" would collapse political accountability into personal control over working conditions and make the scope of section 13 effectively limitless.¹⁴¹

202. *Schrenk* concerned discriminatory conduct within a shared worksite and common work enterprise, involving persons who worked in proximity and interacted in a common workplace.

¹³⁹ Merits Decision at paras 75-6, 79-81, 91-6; *Schrenk* at paras 37-8, 67-9.

¹⁴⁰ Merits Decision at paras 75-6, 79-81, 91-6, 102.

¹⁴¹ *Schrenk* at paras 37-8, 67-9; Merits Decision at paras 74-84.

*Ross v New Brunswick School District No 15*¹⁴² concerned a school board’s obligation to provide discrimination-free educational services in the face of a teacher’s public expression—a teacher being a person interacting directly and “unavoidably” with students, staff and other teachers. *Kempling v College of Teachers (BC)*¹⁴³ concerned professional discipline of a teacher and counsellor—a teacher and counsellor being a person interacting directly and unavoidably with students, staff and other teachers—whose writings were found to communicate that the beliefs contained therein would inform conduct in those professional roles. The Tribunal’s analogy to *Ross* and *Kempling* is flawed. The Tribunal goes as far as to declare, absent any demonstrated reason to do so, that the public statements of trustees, persons with a political mandate and with no direct and unavoidable workplace contact, are to be treated the same as the public statements of teachers, persons with no political mandate and with direct and unavoidable workplace contact: “This follows the Court’s recognition in *Kempling* that ‘when a teacher **[and here we add trustee]** makes public statements espousing discriminatory views, and when such views are linked to [their] professional position...harm to the integrity of the school system is a necessary result’”.¹⁴⁴ The Tribunal erred in failing to reconcile that difference. Mr. Neufeld’s impugned expression occurred wholly outside the Class members’ workplace, in public communications and Board meeting political and governance forums. He was not a teacher, supervisor, counsellor, administrator, or workplace colleague of the Class. Further, the Board repudiated rather than implemented his position.¹⁴⁵ The evidence from the teacher witnesses did not establish an evidentiary foundation capable of supporting the Tribunal’s conclusion that Mr. Neufeld’s publications caused or contributed to an employment-related adverse impact on the Class generally and, if compensation was awarded, a causal connection between the contravention and the injury for which Class-wide relief was granted.¹⁴⁶

¹⁴² [\[1996\] 1 SCR 825](#) [*Ross*].

¹⁴³ [2005 BCCA 327](#) [*Kempling*].

¹⁴⁴ Merits Decision at para 287. [Emphasis added.]

¹⁴⁵ *Schrenk* at paras 3-5, 37-8, 67-9; Merits Decision at paras 67-72, 93-6.

¹⁴⁶ Merits Decision at paras 96-116; *Code* at section 37(2)(d); *Silver* at para 40; *Gichuru v Law Society of British Columbia*, [2014 BCCA 396](#) at paras 6, 12, 37.

The teacher evidence required an objective foundation and disciplined attribution

203. Mr. Neufeld does not deny that the teacher witnesses sincerely experienced distress or that some described adverse interactions with parents, colleagues, students, or administrators. Psychological harm or harm to dignity can constitute an adverse employment impact; dismissal, demotion, discipline, or lost wages are not invariably required. Sincerity, however, does not establish attribution. The Tribunal still had to identify an objectively grounded employment impact and a rational causal route from Mr. Neufeld's publications to that impact.

204. No teacher was dismissed, disciplined, demoted, denied promotion, reduced in pay, or directed by Mr. Neufeld. The Board did not adopt his position, prohibit SOGI resources, remove an approved resource at his direction, discipline a teacher for using those resources, or empower him to supervise any teachers. It publicly repudiated his position and removed his liaison duties so that he would not be physically present in District schools.¹⁴⁷ Mr. Neufeld posed no objective threat to the teachers' employment or exerted any control over their working conditions.¹⁴⁸

205. The Tribunal repeatedly described a workplace that "felt unsafe". A sincerely held feeling is evidence of a state of mind. It does not prove its own objective foundation, that the feared employment consequence was probable, or that Mr. Neufeld caused it. The required questions included:

- a. what employment power Mr. Neufeld could personally exercise;
- b. whether anyone invoked his authority against the witness;
- c. whether the Board implemented his views;
- d. whether a publication directed adverse treatment of the witness;
- e. whether a third party said Mr. Neufeld influenced their conduct; and
- f. whether the feared consequence was objectively grounded rather than merely possible.

206. Teacher A described concealing identity before obtaining a permanent position, fear of not being hired, missed social events, lost friendships, colleagues speaking under their breath or ending conversations, denied collegial courtesies, refusal of a washroom break while staffing a

¹⁴⁷ Merits Decision at paras 103-4.

¹⁴⁸ *School Act* at sections 15(1)-(3), 65(3).

GSA table, and a parent removing a child from the class. Some of those events are capable of constituting workplace adversity. But the actors were colleagues and a parent. The Tribunal did not identify evidence that those persons referred to Mr. Neufeld, relied on his publications, communicated with him, or acted because of anything he said. Teacher A’s conclusion that his speech “emboldened” others was itself a causal opinion requiring but lacking evidentiary support.¹⁴⁹

207. Teacher B described slurs, disputes with colleagues, parental and administrative scrutiny, a stepparent’s public complaint, and an administrative request to “take a step back”. The latter is potentially a concrete workplace event. But the Tribunal’s reasons do not identify what administrators required Teacher B to stop or modify, whether duties or teaching practices changed, why the administrators made the request, or whether Mr. Neufeld caused or materially contributed to any of these things. Later events in 2024 may supply context but cannot retroactively prove causation during the pleaded period. Further, the reasons do not supply a rationale for accepting that Mr. Neufeld was the reason for the difference in atmosphere between the Chilliwack school district and the two other school districts.¹⁵⁰

208. Teacher C identified a career change—not Mr. Neufeld’s publications—as her primary reason for leaving teaching in 2021. Asked directly why she left, she testified that classroom teaching was not a good fit and that earning a living as an on-call teacher would be difficult. Asked separately about Mr. Neufeld’s comments, she said they made her feel “a little less” welcome. Her resignation letter said the District’s lack of action and support was “even more hurtful” than his comments, and she testified that she made the letter public to put pressure on the District. The Tribunal nevertheless described the resignation as occurring “in large part” because of the climate created by Mr. Neufeld’s comments and the District’s response. It did not reconcile that attribution with Teacher C’s direct evidence identifying her primary reason for leaving, or explain what part of the decision to resign it attributed to Mr. Neufeld rather than to her career choice and the District’s conduct.¹⁵¹

¹⁴⁹ Merits Decision at paras 97-8, 106-11.

¹⁵⁰ Merits Decision at paras 112-3.

¹⁵¹ Hearing Transcript at 750-1; Merits Decision at para 114.

209. Teachers were apprehensive and sought advice about whether resources could be used.¹⁵² But the Tribunal identified no Board decision prohibiting SOGI materials, no policy change procured by Mr. Neufeld, and no discipline imposed on a teacher for using an approved resource. The feared institutional exercise of his views never materialized. Apprehension is not proof that he changed a working condition.

210. The institutional record also refutes any assumption that Mr. Neufeld spoke for the employer. The Board, Minister, CTA, BCTF, administrators, and parent organizations publicly opposed him. The Board requested his resignation, removed his liaison duties, and ensured that he would not be physically present in District schools. Class members therefore had objective institutional evidence that he did not speak for the Board majority and could not independently direct their employment.¹⁵³

211. The Tribunal's *inherent harm* reasoning bypassed these gaps. It first characterized the expression as discriminatory, then treated discriminatory expression as inherently harmful, used that inherent harm to establish adverse employment impact, and relied on the resulting impact to conclude that the expression constituted discrimination regarding employment. That is circular. Even where direct targeting or economic loss is unnecessary, the Tribunal must identify an objective evidentiary foundation connecting these publications, this respondent, and this workplace.¹⁵⁴ Subjective reaction cannot prove its own objective reasonableness, causation, or employment nexus. The Tribunal was required to distinguish genuine feelings from employment-related adverse impact caused or contributed to by Mr. Neufeld, and to distinguish his conduct from the independent actions of parents, students, colleagues, administrators, unions, the Board, media actors, and protesters. It did not do so with the discipline section 13 required.

212. Beyond the direct evidence of Teachers A, B, and C, the record also contained:

- a. Mr. Klettke's evidence about reports made by unidentified teachers to the CTA;

¹⁵² Merits Decision at para 109.

¹⁵³ Merits Decision at paras 103-4.

¹⁵⁴ Merits Decision at paras 91-101.

- b. Mr. Hansman’s evidence about public controversy, protests, media attention, meeting security, and institutional responses;
- c. Board, CTA, parent council, and ministerial statements and actions;
- d. the publications themselves and evidence of their reach; and
- e. Dr. Saewyc’s generalized social science evidence concerning stigma, minority stress, concealment, mental health, stereotypes, career anxiety, and risks faced by persons identifying as gay, lesbian, bisexual, transgender and/or queer working with children.¹⁵⁵

213. That evidence may establish context, notoriety, institutional concern, and generalized risk, but it does not, without a reasoned evidentiary bridge, establish that Mr. Neufeld’s publications caused Class members an adverse impact regarding employment. Institutional condemnation proves that institutions condemned the speech. Public controversy proves controversy. Security at meetings proves a heated public environment. None, without an additional evidentiary bridge, proves a poisoned workplace experienced by the represented Class, or one that was caused by Mr. Neufeld.

214. Mr. Klettke’s evidence supplied indirect corroboration, but its limits matter. He reported calls and concerns expressed by unidentified members; the members were not themselves identified, examined, or cross-examined; the number and circumstances of the reports were not clearly quantified; and the evidence did not consistently separate reactions to Mr. Neufeld’s publications from reactions to the surrounding political conflict, media coverage, protests, institutional responses, or pre-existing conditions in the District.¹⁵⁶

The Tribunal adopted Dr. Saewyc’s generalized social context framework without adequately explaining its application to this record

215. Dr. Saewyc’s evidence was generalized social context evidence.¹⁵⁷ It described research and risk; it did not itself establish that those effects occurred in this workplace because of these

¹⁵⁵ Merits Decision at paras 102-7, 110; Appendix A.

¹⁵⁶ Merits Decision at para 110.

¹⁵⁷ Merits Decision at paras 58, 60, 64-6, 105-7, 109, 146, 158-9, 161, 208, 268, 308, 310.

publications. The Tribunal supplied the missing case-specific step by stating that it was “reasonable to infer” the generalized career and job security concerns applied to members of the Class.¹⁵⁸ That inference cannot substitute for proof merely because it is plausible.

216. The problem is not that the Tribunal admitted or considered social science evidence. Social context may properly assist adjudication. The problem is that the Tribunal repeatedly accepted and operationalized Dr. Saewyc’s generalized opinions without visible examination of their methodological limits, factual comparability, causal reach, or dependence on contested characterizations.¹⁵⁹

217. The reasons repeatedly state “we accept” at precisely the points where analysis was required and yet not provided.¹⁶⁰ The Tribunal said: “We accept Dr. Saewyc’s evidence that such misinformation creates conditions for discrimination, exclusion, and violence”.¹⁶¹ That statement embeds several disputed conclusions:

- a. that Mr. Neufeld’s publications were “misinformation” rather than disputed opinions or claims requiring independent assessment;
- b. that the target was persons identifying as gay, lesbian, bisexual, transgender and/or queer rather than ideas, policies, practices, resources, institutions, or medical interventions;
- c. that the publications were materially comparable to the speech examined in the research;
- d. that generalized associations supported a causal conclusion in Chilliwack;
- e. that creating unspecified “conditions” for possible harm satisfied the statutory tests; and
- f. that the asserted effects extended both to persons identifying as gay, lesbian, bisexual, transgender and/or queer and those who cared for them.

¹⁵⁸ Merits Decision at paras 105-7.

¹⁵⁹ Merits Decision at paras 64, 105-7, 158-9, 268, 308, 310.

¹⁶⁰ Merits Decision at paras 64, 105, 158-9, and 310.

¹⁶¹ Merits Decision at para 64.

218. The reasons do not separately justify those steps. The phrase “we accept” purports to perform the work.

219. The Tribunal did not merely use Dr. Saewyc’s evidence after independently determining the publications’ meaning. It used her framework to determine meaning in the first place.¹⁶² Her evidence supplied or reinforced the labels “misinformation”, “anti-LGBTQ” rhetoric, denial, erasure, threats to children, grooming and predation tropes, tacit permission, heightened danger from public figures, and amplified harm through social media. Those labels assumed answers to questions the Tribunal itself had to decide: whether the speech was false; whether it targeted persons or ideas; whether criticism of gender ideology denied persons; whether particular references implicated teachers identifying as gay, lesbian, bisexual, transgender and/or queer as a class; and whether the speech was discriminatory before research concerning the effects of discriminatory speech could be applied.

220. The reasoning was circular. The Tribunal first characterized the expression as “anti-LGBTQ”, discriminatory, or misinformation; then relied on research concerning harms associated with expression so characterized; inferred that those harms occurred or were likely here; and finally used the inferred harms to confirm that the expression was discriminatory or hateful. Social science may assist after expression is accurately classified. It cannot establish the classification by assuming it.

221. The Tribunal’s statement that it was “reasonable to infer” generalized career and job security concerns applied to Class members is the entire case-specific bridge. The reasons do not explain:

- a. which studies supported the proposition;
- b. whether the populations included teachers or comparable public employees;
- c. whether the studied speech resembled these publications;
- d. whether the research established causation rather than mere correlation or association;

¹⁶² Merits Decision at paras 57-8, 60, 64, 105-7, 109, 146, 158-61, 268, 308, 310.

- e. whether other sources of stigma, controversy, or workplace tension were controlled;
- f. why the effects applied to the represented Class; or
- g. how the Board's repudiation of Mr. Neufeld and removal of his liaison duties affected the inference.

222. Plausibility is not proof.

223. The "tacit permission" theory was likewise untethered. The Tribunal accepted that speech by a public figure encourages others to imitate discriminatory speech or conduct, but did not identify who received the supposed permission, which publication the person encountered, what act followed, whether the actor referred to Mr. Neufeld, or whether his publication materially contributed to the conduct.¹⁶³ Without such evidence, "tacit permission" becomes effectively unfalsifiable: later conduct consistent with the theory can be attributed to the public figure without identifying a supported causal route.

224. The comparison with President Trump illustrates the failure to test comparability. Mr. Neufeld objected that research involving rhetoric by the president and vice president of the United States and members of a national administration was not comparable to a trustee in a small Canadian city. The Tribunal answered that his sphere of influence might be smaller but he could still influence people in Chilliwack.¹⁶⁴ That answer does not examine differences in legal authority, political following, media reach, institutional support, national polarization, audience affiliation, or the Board's public repudiation of Mr. Neufeld. *Both are public figures, though at different scales* is not a methodological analysis.

225. The reasons contain no meaningful examination of study design, sample selection, population comparability, self-reporting, confounding variables, effect size, temporal sequence, correlation versus causation, or whether the cited research involved workplace outcomes, teachers, or speech comparable to Mr. Neufeld's. The Tribunal was not required to conduct a

¹⁶³ Merits Decision at paras 109, 158.

¹⁶⁴ Merits Decision at paras 158-9.

scientific peer review. But where generalized research supplied a material bridge to discriminatory meaning, causation, Class-wide employment harm, vulnerability, and compensation, the reasons had to explain why the research could bear that weight, which the Tribunal's reasons did not do.

226. The Tribunal also failed to separate empirical expertise from normative and adjudicative judgment. Dr. Saewyc was qualified regarding research into impacts of stigma on sexual and gender minority populations.¹⁶⁵ The Tribunal nevertheless used her evidence for propositions involving contested terminology, whether claims were “misinformation”, whether identity was authentic, whether speech was “anti-LGBTQ”, what the publications objectively meant, and whether their effects satisfied statutory standards.¹⁶⁶ Those matters involved interpretation, disputed facts, legal characterization, and ultimate issues reserved to the Tribunal.

227. The same generalized propositions were used repeatedly:¹⁶⁷

- a. to establish the social context lens;
- b. to interpret “gender ideology” as erasure;
- c. to identify threats-to-children themes and “transgender”-specific hallmarks;
- d. to classify speech as discriminatory or hateful;
- e. to prove workplace harm and causation;
- f. to extrapolate from three teachers to the Class;
- g. to establish vulnerability; and
- h. to support the magnitude of the remedy.

228. The Tribunal's reasons fail to explain how the Tribunal avoided using the same premise first to classify the expression, again to prove its effects, and again to increase compensation. Repetition gave one generalized premise the appearance of several independent forms of proof.

229. The evidentiary asymmetry made this failure more consequential. The Tribunal admitted and relied extensively on broad social context evidence supporting the Complainant's

¹⁶⁵ Merits Decision at para 25.

¹⁶⁶ Merits Decision at paras 64, 105-7, 158-9, 268, 308, 310.

¹⁶⁷ Merits Decision at paras 58, 60, 64, 105-7, 109, 146, 158-9, 268, 308, 310.

framework, while excluding or restricting evidence from Mr. Neufeld’s lay witnesses offered to challenge that framework because the witnesses were not experts or their lived experience was said to be irrelevant.¹⁶⁸ The issue is not that lay witnesses could necessarily rebut scientific studies. It is that social context was used to decide what words meant, whether ideas could be separated from persons, how affected persons would understand the speech, and what consequences followed, while contrary contextual evidence capable of undermining the asserted uniformity of meaning and experience was excluded.

230. Mr. Neufeld does not overstate the point. The Tribunal did not mechanically accept every ultimate conclusion Dr. Saewyc’s evidence might support. It found some publications were not hate speech, recognized that context could dilute hallmarks, and acknowledged that opposition to “gender-affirming” medical treatment was not itself hate speech.¹⁶⁹ However, the Tribunal accepted Dr. Saewyc’s foundational characterizations, generalized causal propositions, and social context framework with little visible scrutiny, then used that framework repeatedly to interpret the publications, infer workplace effects, extrapolate to the Class, and assess remedy. Its occasional restraint at the final publication classification stage did not cure the uncritical premises structuring the analysis from the outset.

231. Under section 59(2), a Class-wide finding cannot be sustained merely because generalized research makes the asserted harm conceivable. The Tribunal was required yet failed to explain the evidentiary bridge connecting the research to these publications, these actors, this workplace, and the relevant period. Its failure to address comparability, confounding causes, correlation versus causation, and the limits of extrapolation left the Class-wide inference unsupported or otherwise unreasonable in light of the full record.¹⁷⁰

232. The Tribunal also held that the statements “in themselves” undermined access to a discrimination-free work environment and inferred wider workplace impact by analogy to *Ross* and *Kempling*. But *Kempling* involved a teacher and counsellor whose own writings expressly communicated that his discriminatory beliefs would inform his conduct in those professional

¹⁶⁸ *Neufeld 6* at paras 16-8, 21, 23, 25; Merits Decision at paras 64, 105-7, 158-9, 268, 308, 310.

¹⁶⁹ Merits Decision at paras 144, 203-7.

¹⁷⁰ Merits Decision at paras 105-7, 308-10.

roles. *Ross* likewise involved a serving teacher whose continuing employment placed him in a position of trust and influence over students. Far from being “hard to avoid”, Mr. Kempling, Mr. Ross, and their views were unavoidable. The Court of Appeal stated that Mr. Kempling’s writings “in themselves, undermine access to a discrimination-free education environment” **because** “Mr. Kempling made clear that his discriminatory beliefs would inform his actions **as a teacher and counsellor**”. The Supreme Court of Canada stated that Mr. Ross’ off-duty conduct “impaired his ability to be impartial and impacted upon the educational environment **in which he taught**” and that “[t]he reason that it is possible to ‘reasonably anticipate’ the causal relationship in this appeal is because of the significant influence teachers exert on their students and the stature associated with the role of a teacher”. Treating Mr. Neufeld’s public and Board meeting political expression as inherently harmful to teacher employment without either authority’s professional role connection risks converting the Tribunal’s characterization of the expression as discriminatory into proof of adverse employment impact.¹⁷¹

233. Causation and attribution required greater discipline. The Tribunal had to distinguish harm caused by:

- a. Mr. Neufeld’s own publications;
- b. statements or conduct of parents, students, colleagues, protesters, media actors, and other third parties;
- c. the BCTF’s, CTA’s, Board’s, and government’s public responses;
- d. the broader political controversy surrounding SOGI 123; and
- e. pre-existing discrimination or climate conditions in Chilliwack.

234. The Tribunal could find contribution without proving exclusive causation. But it still had to identify a supported, non-speculative connection between Mr. Neufeld’s conduct and the particular employment-related impact attributed to him, which it did not.

¹⁷¹ Merits Decision at paras 99-102; *Kempling* at paras 44-5, 79; *Ross* at paras 45, 49, 101.

235. The institutional responses create an additional attribution problem. The Board's request for resignation, removal of liaison duties, union motions, media releases, and public denunciations may have amplified the controversy and made the publications more difficult to avoid. The Tribunal largely treated those responses as confirmation that Mr. Neufeld had harmed the workplace. It did not sufficiently ask whether they were independent intervening contributors to the climate later attributed to him. Institutional reaction cannot become self-validating proof of the allegation that prompted the reaction.¹⁷²

236. Under section 59(2), the Court must not reweigh the teachers' testimony. It may nevertheless determine whether the Class-wide findings lack evidence or are otherwise unreasonable in light of all the evidence. A finding resting predominantly on three individual experiences, second-hand reports, generalized research, institutional opinion, and inferential analogies requires a reasoned explanation for extrapolation to the represented Class. The Merits Decision did not provide an adequate evidentiary basis for that breadth.

237. The Court should therefore hold:

- a. on correctness, that section 13 remains anchored to the *Code*'s defined employment subject matter and requires a contextual assessment of a sufficient nexus to the Class members' actual employment context and an adverse impact related to or associated with employment. The Tribunal could not, therefore, treat trustee status, educational subject matter, and the asserted workplace impact as mutually self-proving and thereby erred in law in finding a breach of section 13;
- b. under section 59(2), that the findings about Mr. Neufeld's individual workplace integration, control over working conditions, and Class-wide adverse impact were unsupported or otherwise unreasonable in light of the full record; and
- c. alternatively, that the section 13 determination must be remitted for reconsideration under the corrected legal framework, with a disciplined assessment of the statutory employment context, the wholly external public and Board meeting character of the expression,

¹⁷² Merits Decision at paras 96, 102-4.

individual authority, actual workplace connection, case-specific harm, causation, and the permissible use of social fact evidence.

M. The *Charter* balancing was inadequate

238. Where an administrative decision maker exercises a discretionary statutory power in a manner that limits *Charter* protections, it must proportionately balance the relevant *Charter* protections with the statutory objectives. The reasons must show meaningful consideration of the severity of the interference and whether the outcome gives effect, as fully as possible, to the *Charter* protection in light of the particular statutory mandate.¹⁷³

239. The expression here concerned public education, government policy, elected governance, parental concerns, sex, gender, and medical or educational practices. It was often forceful and offensive. Its political subject matter lay close to the core democratic purposes of section 2(b) and required careful attention in the proportionality analysis.¹⁷⁴

240. The Tribunal said it balanced freedom of expression. But reciting the importance of expression and then applying an expanded concept of discriminatory harm is not sufficient. The reasons had to explain why imposing liability for each publication found to contravene section 7(1)(a) was a proportionate response, considering:

- a. the political and public policy character of the expression;
- b. whether the publication indicated discrimination or an intention to discriminate, or instead expressed opposition to an idea, program, or practice, including whether it called for any concrete discriminatory action;
- c. the availability of a less rights-impairing interpretation consistent with the statutory text;
- d. the extent and likelihood of the identified harm;

¹⁷³ *Doré v Barreau du Québec*, [2012 SCC 12](#) at paras 56-7; *Loyola High School v Quebec (Attorney General)*, [2015 SCC 12](#) at paras 39-41; *Vabuolas v British Columbia (Information and Privacy Commissioner)*, [2025 BCCA 83](#) at paras 89-90, 114-22.

¹⁷⁴ *RJR-MacDonald Inc v Canada (Attorney General)*, [\[1995\] 3 SCR 199](#) at para 169; *R v Bryan*, [2005 BCCA 285](#) at 30-1; *Whatcott* at para 65.

- e. the distinction between offence, affront to dignity, social disagreement, and legally cognizable discriminatory harm; and
- f. the breadth and prospective effect of the cease-and-refrain order.¹⁷⁵

241. The Tribunal's treatment of the six non-education publications demonstrates that proximity, real-world effect, and proportionality mattered to its analysis. As explained above, it dismissed those publications because they did not express an intention to effect real-world harm, call on others to do so in a concrete way, or present a sufficiently proximate prospect of harm. The reasons do not explain why the 24 Education Publications received a different proportionality analysis, rather than why their political and public policy character intensified the need to protect expression. The unexplained difference confirms that the Tribunal did not give effect, as fully as possible, to Mr. Neufeld's section 2(b) protection.

242. This ground does not ask the Court to conduct its own freestanding *Charter* balancing. It asks the Court to determine whether the Tribunal's reasons disclose a proportionate balancing of Mr. Neufeld's section 2(b) protection with the statutory objectives it was legally required—and expressly undertook—to consider. They do not.

N. In the alternative, an interpretation of section 7(1)(a) that prohibits the expression at issue is unconstitutional

243. Mr. Neufeld's primary position is that section 7(1)(a), properly interpreted, does not prohibit the expression at issue because it does not indicate discrimination or an intention to discriminate. In the alternative, if section 7(1)(a) prohibits that expression notwithstanding its character as political and public policy expression, the prohibition unjustifiably infringes thought, belief, opinion and expression under section 2(b) of the *Charter*:

- a. Correctness governs. The constitutional validity of a statutory provision is a question for the Court, determined on the standard of correctness. This is distinct from deferential review of administrative *Charter* balancing. The Tribunal lacked jurisdiction to

¹⁷⁵ Merits Decision at paras 21, 275-90, 334.

determine the constitutional validity of section 7(1)(a). The issue is therefore a direct constitutional question for this Court, rather than an alleged error by the Tribunal.¹⁷⁶

- b. Section 2(b) is engaged. The impugned publications conveyed meaning and concerned public education, government policy, elected governance, parental interests, sex, gender, and medical and educational practices. They fall within section 2(b). Section 7(1)(a) limits freedom of expression in both purpose and effect. The constitutional question is whether that limit is justified when the provision is applied to political and public policy expression. Section 2(b) separately protects thought, belief, opinion and expression. That protection does not depend on the Tribunal accepting Mr. Neufeld's beliefs as true, reasonable, informed, scientific, compassionate or consistent with prevailing institutional opinion. Where liability rests on treating his underlying beliefs as a denial of the entitlement of persons identifying as transgender to human dignity, the provision also burdens his freedoms of thought, belief and opinion.
- c. The burden shifts under section 1. Once the infringement is established, the party supporting the limit must justify it as demonstrably reasonable in a free and democratic society. The analysis requires a pressing and substantial objective, rational connection, minimal impairment, and proportionality between salutary and deleterious effects.¹⁷⁷
- d. The objective does not justify the provision's expanded application. Preventing discrimination and protecting equal participation are pressing and substantial objectives. But those objectives do not establish a rational connection between restricting political and public policy expression about ideas, educational policy, medical practices, and asserted accounts of identity and the discriminatory harm the Legislature may prohibit. An interpretation that permits liability based on an adjudicator's characterization of expression as "misinformation", "erasure", "an insidious veneer", or a condition for possible harm captures expression beyond what is rationally tailored to prevent discrimination. Offence, affront, ideological disagreement, and speculative social consequences cannot, without more, justify that limit.

¹⁷⁶ *Vavilov* at paras 53, 55-7; *ATA* at section 45.

¹⁷⁷ *R v Oakes*, [\[1986\] 1 SCR 103](#) [*Oakes*] at paras 66, 69-71.

- e. The broader statutory prohibition is not minimally impairing. If the Court concludes that section 7(1)(a), properly interpreted, prohibits the expression at issue, that prohibition reaches substantially more protected expression than necessary to prevent discrimination. A narrower prohibition requiring a publication, interpreted in context, to indicate discriminatory treatment or an intention to discriminate against persons because of a protected characteristic would advance the statutory objective without imposing liability merely because criticism of beliefs, ideas, policies or practices is characterized as a concealed attack on persons. The constitutional objection is to the reach of the statutory prohibition on the meaning adopted by the Court, not merely to the Tribunal's interpretation or application of the provision.
- f. The deleterious effects are grave. The broader interpretation chills participation in debates about public institutions and contested social, scientific, educational, moral, and medical questions. It enables legal liability, monetary awards, and prospective cease-and-refrain orders based on uncertain distinctions between permissible disagreement and prohibited meaning. The chilling effect is amplified where disagreement is recast as "existential denial", criticism of ideas is treated as an "insidious veneer" for hostility toward persons, and disputed social context propositions are used to transform political expression into an indication of discrimination or an intention to discriminate.
- g. The salutary effects do not outweigh the constitutional harm. The *Code* has a compelling role in preventing discrimination. It has no legitimate need to treat political disagreement as discrimination merely because it criticizes beliefs, ideas, policies or practices, or to presume that such criticism conceals an attack on persons. Extending section 7(1)(a) beyond that boundary contributes little to preventing actual discrimination while imposing severe costs on democratic participation, viewpoint diversity, and the search for truth through open debate.
- h. Remedy. The Court should first adopt the constitutionally compliant interpretation advanced by Mr. Neufeld. If section 7(1)(a) cannot reasonably bear that interpretation, and its reach unjustifiably infringes Mr. Neufeld's freedoms of thought, belief, opinion

and expression under section 2(b), the Court should declare under section 52(1) of the *Constitution Act, 1982* that the provision is of no force or effect to the extent of the inconsistency, or grant such other tailored constitutional relief as it considers appropriate.¹⁷⁸

O. Bias and procedural fairness

244. Procedural fairness is assessed in all the circumstances under section 59(5) of the *ATA*. The Tribunal controlled its own process and had broad authority to admit evidence it considered necessary and appropriate. That authority remained subject to Mr. Neufeld's statutory entitlement to present relevant evidence, cross-examine witnesses, and make submissions, and to the common law duty of procedural fairness requiring a meaningful opportunity to know and answer the case against him.¹⁷⁹

245. Mr. Neufeld was deprived a meaningful opportunity even to elicit relevant evidence, to meaningfully cross-examine witnesses in the commission of eliciting such relevant evidence, to then follow that exercise by making submissions grounded in such relevant evidence as elicited, and to call further relevant witnesses for the purpose of fully and fairly answering the case against him.¹⁸⁰

246. The CTA's case and the Tribunal's reasons relied heavily on two themes: collapsing the distinction between criticism of ideas and discrimination against persons; and social context, which is to say, historical discrimination, stereotypes, the meaning and effect of terminology, the relationship between criticism of gender identity and attacks on persons, and the societal effects of particular rhetorical themes.¹⁸¹ Refusal to permit Mr. Neufeld to attempt to prove his theory of the case by foreclosing his opportunities to elicit evidence responsive to those themes rendered the hearing procedurally unfair.

¹⁷⁸ *Schachter v Canada*, [1992] 2 SCR 679 at paras 25-31, 84, 87.

¹⁷⁹ *Code* at sections 35(2)-(3); *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 22, 28, 30, 32.

¹⁸⁰ Hearing Transcript at 200-2, 230-2, 649-56, 836-66; *Neufeld 6* at paras 3, 16-8, 21, 23, 25.

¹⁸¹ Merits Decision at paras 55-65, 105-7, 145-61, 266-69, 308, 310.

247. Objective legal tests routinely depend on contextual evidence. The proposed evidence was not tendered simply to show that three individuals agreed with Mr. Neufeld. It was capable of bearing on the asserted uniformity of the social meaning attributed to his language, the distinction between criticism of policy and animus toward persons, and the context relevant to how a reasonable person would understand the publications.

248. The Tribunal's conclusion that the witnesses were not members of the represented Class did not answer that relevance. Evidence does not become irrelevant to objective meaning merely because the witness is outside the claimant class. Nor did the Tribunal explain why concerns about scope, duplication, or weight could not be addressed through reasonable limits rather than complete exclusion.

249. Neither was Mr. Neufeld's intended cross-examination of the teacher witnesses intended to delve into inappropriate personal matters. Rather, the exercise sought to discover, from the perspective of Complainant witnesses, the line between belief and identity.

250. The exclusions were material. The Merits Decision later relied on propositions about "erasure", "existential denial", and the meaning of "gender ideology" that went to the heart of liability. Fairness required a meaningful opportunity to answer those contextual theories.

251. Similarly, Mr. Neufeld's allegation of reasonable apprehension of bias must be assessed cumulatively and objectively. An adverse ruling, forceful language, impatience, or rejection of a party's position does not by itself establish bias. The question is whether an informed person, viewing the matter realistically and practically and having thought it through, would conclude that the panel would not decide fairly. Mr. Neufeld does not allege personal animus or bad faith. The concern is closed-mindedness toward the central defence and an uneven process that reinforced one conceptual framework while restricting meaningful efforts to challenge it.¹⁸²

¹⁸² *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at para 40; *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623 at paras 21-2, 40.

The Lens and the Language

252. The reasonable apprehension of bias began with the Tribunal's tacit admission of its closed-mindedness at paragraphs 55 to 57, in which it announced, "We can think of no better example for how transpeople are denied" than Mr. Neufeld's legal argument separating ideology from persons. **That statement heralded the Tribunal's closed-mindedness going into its analysis of Mr. Neufeld's argument around the separation of ideas and persons.**

253. The Tribunal removed all doubt of its chosen filters in its next series of statements, culminating in the announcement that Mr. Neufeld's entire defence that he is critical of an ideology is an insidious veneer. The Tribunal ended the three-paragraph insight into its lens with the self-referential declaration that its own decision is proof of its claims: "As this decision illustrates, such terms can create the conditions for discrimination and hatred to flourish".

254. Notwithstanding the Tribunal's disclaimers occasionally dropped throughout the decision that it understood the foregoing factors are insufficient to trigger the human rights provisions in question, it consistently backslid into the very themes it indicated in paragraphs 55 to 57 would dominate its analysis. The Tribunal's occasional lip service to legal realities it knows it cannot ignore does not fix its broken chain of reasoning. That break is seen clearly in the passage that effectively promises nothing Mr. Neufeld points to that would fairly indicate he was discussing an idea is going to matter, because that is nothing more than an insidious veneer.

255. The Tribunal's closed-mindedness was not confined to its reasons; it shaped the hearing itself. In paragraphs 55 to 57, the Tribunal treated Mr. Neufeld's distinction between criticism of ideas and attacks on persons as an "insidious veneer". During the hearing, that same distinction was repeatedly explained as the foundation of the defence, yet the Tribunal restricted the evidentiary inquiry directed to establishing it. The concern is not simply that the Tribunal ruled against Mr. Neufeld; the Tribunal treated the very distinction he sought to establish as something other than a genuine defence: personal questioning during the hearing, and a concealed attack on human beings in the reasons.¹⁸³

¹⁸³ Hearing Transcript at 200-2, 230-2, 650-3.

256. The Tribunal knew precisely why counsel sought to examine these beliefs. During Mr. Hansman’s examination, counsel expressly identified the distinction between criticism of belief systems and criticism of the people who hold them as his theory of the case. He explained that the opposing position—“These aren’t beliefs. This is just their identity”—was the issue requiring examination. He repeated the explanation when the Chair questioned the relevance of the inquiry: the complaint treated criticism of gender theory as discrimination, and Mr. Neufeld sought evidence permitting those propositions to be separated rather than assumed to be identical. The Tribunal nevertheless said it did not feel it had received an answer connecting the evidence to the legal analysis. Mr. Neufeld had supplied that answer. The Tribunal’s inability to recognize it foreshadowed the categorical rejection of the distinction in its reasons. The trouble is that it never actually knew what evidence would emerge. The Tribunal closed its mind even to the possibility.¹⁸⁴

257. Teacher A’s evidence made the distinction concrete. Asked what she believed, she agreed that identifying as female meant that the person “really does become female”. She later expressly described her account of nonbinary identity as her “belief” and confirmed that she held the propositions being discussed as fact. These were substantive propositions about sex, gender and identity, not merely evidence that Teacher A belonged to the protected class. Yet when counsel explained that he needed to explore those propositions to distinguish discrimination against persons from criticism of beliefs, the Tribunal returned to the sufficiency of the evidence establishing class membership and characterized the inquiry as questioning about Teacher A’s “romantic life” and “sex life”. That answered a different question. Establishing a protected characteristic did not exhaust the relevance of evidence concerning the ideas Mr. Neufeld had criticized. The Tribunal’s response displaced Mr. Neufeld’s stated evidentiary purpose rather than engaging with it.¹⁸⁵

258. The invitation to make legal arguments at the end did not answer counsel’s objection. He expressly warned that restricting the evidentiary exploration would leave him arguing “in a vacuum”. The Tribunal restricted that exploration, then characterized the distinction it was intended to establish as an “insidious veneer”. This is the closed-mindedness alleged: the

¹⁸⁴ Hearing Transcript at 200-2, 230-2.

¹⁸⁵ Hearing Transcript at 644-56.

Tribunal approached Mr. Neufeld's defence through a premise that collapsed disagreement with propositions about gender into denial of the people who hold or embody them. It treated inquiry into those propositions as irrelevant personal probing and ultimately treated criticism of them as a concealed attack on persons. Taken together, the hearing exchanges and paragraphs 55 to 57 support a reasonable apprehension that the Tribunal was not genuinely open to Mr. Neufeld's theory of the case. The issue is not whether the Tribunal accepted that theory, but rather whether the Tribunal remained open to examining it before rejecting it. **It manifestly was not.**¹⁸⁶

259. The Tribunal's commitment to seeing Mr. Neufeld's central argument as an "insidious veneer" is next reflected in the loaded language it accepted and used at moments in the decision where it was supposedly still deciding whether Mr. Neufeld was guilty, as opposed to viewing Mr. Neufeld's guilt as a foregone conclusion.

260. Early on in the decision, the Tribunal adopted conclusion-laden vocabulary rather than neutral descriptions, contributing to what a reasonable person would view as closed-mindedness. The Tribunal did not consistently describe the competing positions neutrally before deciding them. It repeatedly adopted vocabulary containing the Complainant's disputed premises or effectively resolving the ultimate issue: "misinformation", "anti-LGBTQ rhetoric", "existential denial", "erasure", "authentic existence", "deceiver/pretender trope", "insidious veneer", "discriminatory speech", and "tacit permission". Such terms may be justified after their predicates are proven. Used as starting vocabulary, they preload the result.¹⁸⁷

261. The clearest example is the statement: "We accept Dr. Saewyc's evidence that such misinformation creates conditions for discrimination, exclusion, and violence".¹⁸⁸ That language assumes the expression was factual misinformation, that its target was persons identifying as gay, lesbian, bisexual, transgender and/or queer, that it was comparable to expression studied elsewhere, and that a generalized causal mechanism applied here. The label and the inferred harm then reinforce each other.

¹⁸⁶ Hearing Transcript at 650-3.

¹⁸⁷ Merits Decision at paras 55-8, 60-6, 105-10, 146, 158-61, 203-8, 268, 308, 310.

¹⁸⁸ Merits Decision at para 64.

262. Neutral and symmetrical alternatives were readily available. The Tribunal could have described the evidence without accepting either party’s contested premises.

Conclusion-laden formulation	Neutral formulation preserving the issue
“Misinformation”	Disputed factual claims, opinions, and policy assertions
“Anti-LGBTQ rhetoric”	Expression critical of SOGI 123, institutional gender-identity affirmation, and related educational or medical practices
“Denial of trans people”	Rejection of the proposition that gender identity determines sex or is independent of biological sex
“Existential denial”	Disagreement about the nature and legal or social significance of gender identity
“Erasure”	Advocacy to remove, reduce, or change particular identity-affirming content, practices, or resources
“Authentic existence”	The person’s asserted or sincerely held gender identity
“Sex assigned at birth”	Sex recorded at birth, sex classification at birth, or the relationship between biological sex and gender identity
“Insidious veneer”	Mr. Neufeld’s asserted distinction between criticism of persons and criticism of ideas or practices
“Deceiver/pretender trope”	Expression disputing the accuracy of an identity claim or alleging concealment in a particular context
“Trans people have an agenda”	The asserted existence of an organized political, institutional, or ideological movement
“Tacit permission”	An alleged and disputed causal influence on later third-party conduct
“Discriminatory speech”	The impugned speech alleged to be discriminatory
“Poisoned workplace”	The workplace environment alleged to have been adversely affected

263. These alternatives do not endorse Mr. Neufeld’s position. They merely preserve the questions for adjudication. A neutral decision could have said that Mr. Neufeld characterized certain propositions concerning gender identity as an ideology and maintained that he criticized those propositions and related policies, while the Complainant argued that the distinction was

artificial and that the publications targeted “transgender” persons. The Tribunal then had to decide the target of each publication without presuming either characterization.

264. The same discipline was required with Dr. Saewyc’s evidence. The reasons could have stated that her research concerned the effects of expression characterized in the literature as “homophobic” or “transphobic”, and that the Tribunal first had to decide whether each impugned publication fell within the studied category and whether the research supported an inference about this speaker, audience, workplace, and period. Instead, the terminology often prejudged those threshold questions.

265. The phrase “sex assigned at birth” illustrates the problem. It may be conventional in some circles, but in this dispute, it carries a contested implication. Mr. Neufeld’s position was that sex is biologically determined and that the propositions described as “gender ideology” were open to criticism. The Tribunal was not forbidden to use the phrase, but neutral alternatives—“sex recorded at birth”, “sex classification at birth”, or “the relationship between biological sex and gender identity”—would have acknowledged the dispute rather than treating one side’s vocabulary as the unquestioned baseline.¹⁸⁹

266. A useful symmetry test is whether the decision maker can state a party’s position in terms its proponents would recognize, without accepting it as correct. Applied here, the Tribunal had to distinguish among the following questions:

- a. whether Mr. Neufeld denied that human beings identifying as transgender physically exist, or rejected propositions about gender identity;
- b. whether he advocated removing persons from schools, or changing resources and practices;
- c. whether he said persons identifying as gay, lesbian, bisexual, transgender and/or queer were predators, or claimed that educational content could make children more vulnerable to actual predators;

¹⁸⁹ Merits Decision at paras 52-4.

- d. whether he said “transgender” persons were inherently deceptive, or disputed the accuracy of particular identity claims; and
- e. whether he intended discrimination, or intended a policy outcome the Tribunal later classified as discriminatory.

267. The reasons repeatedly substituted the Complainant’s answer before completing the inquiry.

268. The linguistic asymmetry was pervasive. The Complainant’s propositions were described as reality, authenticity, evidence-based care, inclusion, recognition, dignity, and life-saving practice. Mr. Neufeld’s competing propositions were described as misinformation, denial, erasure, fearmongering, dehumanization, and disguised hostility. **Once one side’s worldview is “reality” and the other’s is “denial”, the Tribunal has resolved the central dispute by vocabulary rather than evidence and statutory analysis.**

269. This vocabulary created a self-reinforcing chain: label the speech “anti-LGBTQ” or misinformation; apply research concerning harms from “anti-LGBTQ” misinformation; infer those harms occurred; use the inferred harms to prove discrimination; and then treat the discrimination finding as confirmation that the original labels were correct. The vocabulary did not merely describe a completed analysis. It substituted for part of the analysis.

270. The Tribunal’s automatic uptake of the Complainant’s conclusion-laden vocabulary moves it from impartial adjudicator to activist advocate for the Complainant and is in and of itself sufficient for a reasonable person having thought the matter through to apprehend bias.

The Procedural and Evidentiary Asymmetry

271. The conclusion-laden vocabulary also intersected with the procedural asymmetry of the hearing. Respondent counsel attempted to expose the circular premise of Dr. Saewyc’s opinions: research about the effects of “homophobic” or “transphobic” speech becomes probative only after the impugned speech is accurately classified. The Tribunal upheld an objection on the basis that relevance and necessity were legal questions, while permitting counsel to ask about the

premise of the research,¹⁹⁰ the significance of which is that the Tribunal's reasons used Dr. Saewyc's evidence to help classify the speech, accepted the very labels Mr. Neufeld sought to test, and did not confront the circularity.

272. The Commissioner's questioning strategically reinforced rather than neutrally tested the Complainant's expert evidence. Respondent counsel objected that the Commissioner was effectively conducting a second examination-in-chief under the form of cross-examination.¹⁹¹ An intervenor may properly advance a position and ask questions within its permitted role. The cumulative effect nevertheless matters: the Complainant called the expert, the Commissioner elicited additional favourable evidence, Mr. Neufeld confronted both presentations, and the Tribunal later adopted much of the common conceptual framework.

273. The Tribunal also took a permissive approach to weak and prejudicial Complainant evidence. It admitted Mr. Klettke's reports of unidentified teachers' statements, allowed evidence about third-party events, and repeatedly deferred reliability and attribution problems to weight.¹⁹² When Teacher C described an unidentified remark the content of which she could not recall and could not establish was directed at her, Respondent counsel argued that the insinuation was untestable. The Tribunal allowed it to remain because lack of content could be argued as lack of probative value and, in the Tribunal's view, lack of content meant lack of prejudice.¹⁹³ An allegation can be prejudicial precisely because it leaves an emotionally charged insinuation that cannot be meaningfully tested.

274. Broad evidence about parents, students, colleagues, protests, vandalism, anonymous flyers, media attention, meeting security, political supporters, later events, and communications from persons not shown to be connected to Mr. Neufeld was allowed to accumulate. Context may be admissible. But the final reasons converted the accumulated context into a "ripple effect", "emboldenment", and "tacit permission" narrative without consistently proving attribution.¹⁹⁴ The procedural concern is that a broad field of Complainant-side association

¹⁹⁰ Hearing Transcript at 81-4.

¹⁹¹ Hearing Transcript at 68-70.

¹⁹² Hearing Transcript at 297-301.

¹⁹³ Hearing Transcript at 753-5.

¹⁹⁴ Merits Decision at paras 96, 101-2, 109-10, 115.

evidence was admitted and later treated as causal confirmation, while responsive Respondent context was more narrowly confined. Broad Complainant evidence was repeatedly admitted subject to weight, Mr. Neufeld had to object to preserve relevance and attribution issues, and the final reasons later relied on the cumulative narrative to which those objections were directed.

275. The latitude allowed in the cross-examination of Mr. Neufeld adds to the cumulative concern. Counsel ranged into unrelated litigation, personal family proceedings, supporters, fundraising, third-party websites and materials, opposition to Tribunal access procedures, and whether he was a member of or had attended meetings of the Ku Klux Klan. Respondent counsel described the KKK questioning as abusive.¹⁹⁵ No evidentiary foundation connected him to that organization; the suggestion itself risked guilt by association with the archetype of organized hate propaganda.

276. The Tribunal admitted an extensive Complainant-side framework through Dr. Saewyc, the Commissioner's voluminous contextual materials, Complainant witnesses' accounts of community climate, historical stereotypes, foreign examples, public figure rhetoric, online amplification, "tacit permission", generalized vulnerability, and predicted workplace effects. It later used that material to determine meaning, target, causation, Class-wide harm, and remedy. Respondent witnesses capable of disputing or supplementing the asserted social meaning and uniformity of experience were excluded, depriving Mr. Neufeld of the opportunity to respond with lived-experience evidence.¹⁹⁶

277. The asymmetry cannot be dismissed simply by saying the Complainant retained an expert and Mr. Neufeld did not. The Tribunal used Complainant-side social context for adjudicative propositions extending beyond generalized research: whether criticism of ideology targeted persons, whether words communicated "erasure", whether educational concerns invoked predation tropes, whether later third-party conduct was causally connected, and whether the Class suffered workplace harm. Once social context was permitted to answer those questions,

¹⁹⁵ Hearing Transcript at 1,466-7.

¹⁹⁶ Merits Decision at paras 58, 60, 64-6, 105-7, 109-10, 146, 158-61, 208, 268, 308, 310; *Neufeld 6* at paras 16-8, 23, 25.

fairness required a meaningful opportunity to test the asserted premises and present materially responsive context.

278. Further conduct at the hearing indicates closed-mindedness. The Tribunal confused counsel's zealous advocacy of Mr. Neufeld's position with "performance for members of the public", issued a veiled threat around counsel's professional obligations, and said it did not see a basis for the suggestions of unfairness. The trouble is not that the Tribunal's accusation was disingenuous; indeed, the Tribunal genuinely assumed counsel was putting on a show. The problem is far worse. The Tribunal's assumption sprang from the very closed-mindedness Mr. Neufeld earlier identifies. So entrenched in its worldview was the Tribunal that it could not distinguish legitimate advocacy from performative elocution and unprofessionalism.¹⁹⁷ In the Tribunal's mind, so illegitimate was any possible defence on the part of the Respondent that there could be only very little room for advocacy and, in the Tribunal's good faith opinion, counsel's insistence of delivering the defence and the advocacy could be nothing other than performance.

279. The issue is not whether the panel occasionally stated correct legal principles or made individual rulings favourable to Mr. Neufeld. The issue is whether the proceeding, viewed as a whole, gave Mr. Neufeld a fair opportunity to meet the contextual case that ultimately determined liability. It did not. The opening exchanges, the evidentiary rulings, the Commissioner's questioning, the treatment of objections, and the final reasons reveal a process that accepted the Complainant-side framework and constrained meaningful efforts to test or answer it.

280. Read cumulatively, the transcript, evidentiary asymmetry, excluded Respondent context, restricted testing of the expert framework, permissive treatment of weak Complainant material, latitude for prejudicial questioning, and final adoption of conclusion-laden vocabulary establish a reasonable apprehension that the panel was closed-minded toward the central defence before completing the required publication-by-publication analysis.

¹⁹⁷ Hearing Transcript at 1042-53.

281. The hearing process was unfair because Mr. Neufeld lacked a meaningful opportunity to test the asserted premises and present materially responsive context to the conceptual and social context case ultimately used against him.

P. The Merits Decision proceeded from an incomplete constitutional analysis of the Tribunal's authority to apply section 7 to internet publications

282. Mr. Neufeld advances the division of powers issue as a narrow secondary ground. He accepts that the internet is not a federal enclave and that valid provincial legislation may regulate online conduct having a sufficient connection to British Columbia. He does not contend that every internet publication is immune from provincial human rights legislation.¹⁹⁸

283. The Merits Decision proceeded from the Tribunal's earlier conclusion that section 7 could constitutionally apply to the impugned internet publications. In that earlier ruling, the Tribunal applied the pith and substance framework. It characterized section 7 as directed to reducing the personal and social costs of discrimination and providing civil redress, classified that matter under provincial authority over property and civil rights, treated the internet medium as non-determinative, distinguished regulation of telecommunications systems from regulation of content, and held that any effect on federal telecommunications jurisdiction was incidental.¹⁹⁹

284. *Attorney General of Quebec v Kellogg's Co of Canada*²⁰⁰ and *Irwin Toy Ltd v Quebec (Attorney General)*²⁰¹ support the general proposition that use of a federally regulated communications medium does not, without more, immunize advertising or other conduct from otherwise valid provincial laws directed to provincial purposes.

285. The Court of Appeal's subsequent decision in *Clearview AI* confirms that online activity is not beyond provincial jurisdiction merely because it occurs through the borderless internet. In assessing the constitutional applicability of a provincial regulatory regime to an out-of-province actor, the required sufficient or real and substantial connection is contextual and depends on the

¹⁹⁸ *Clearview AI*.

¹⁹⁹ *Neufeld 3*.

²⁰⁰ [\[1978\] 2 SCR 211](#) [*Kellogg's*].

²⁰¹ [\[1989\] 1 SCR 927](#) [*Irwin Toy*].

relationship among the province, the subject matter of the legislation, and the person or conduct regulated. In the internet context, physical location may carry less weight than it once did.²⁰²

286. The error affecting the Merits Decision is that it proceeded from the Tribunal's earlier general analysis without separately and expressly addressing the distinct constitutional questions arising from applying section 7 to these internet publications. The analysis had to address:

- a. the proper characterization of section 7 as applied in this case to public internet expression, including its legal and practical effects on publication and future speech;
- b. the distinction between the validity of section 7 generally, its constitutional applicability to the particular online conduct, and the territorial connection required for British Columbia to regulate that conduct;
- c. the specific connections among British Columbia, the subject matter of section 7, Mr. Neufeld, the intended audience, the Chilliwack school system, and the alleged local discriminatory effects; and
- d. whether the remedies imposed regulate only local civil consequences or, in substance and effect, reach the publication and transmission of expressive content through an interprovincial medium.

287. The Tribunal's characterization—reducing discrimination and providing civil redress—was expressed at a high level of abstraction. Although that characterization supports provincial competence, it gave insufficient attention to the conduct actually prohibited, the provision's direct operation upon public expression, and the practical effects of cease-and-refrain and monetary orders arising from internet publications. The content-versus-infrastructure distinction is relevant but not independently determinative. The question remained whether, in pith and substance and as applied here, section 7 regulated a local civil consequence of the publications or regulated the publication of expressive content through an interprovincial medium.²⁰³

²⁰² *Clearview AI* at paras 21-5, 35-40, 49-62.

²⁰³ *Greenhouse* at paras 50-8; *Kellogg's* at paras 41-2; *Irwin Toy* at paras 15-8, 26-30.

288. *Clearview AI* presents an important obstacle to this ground but does not eliminate it. That case concerned systematic commercial collection and use of British Columbians' biometric information. It did not decide whether, or on what analysis, British Columbia may regulate the expressive content of an individual's political internet publication under section 7 of the *Code*. Nor does it establish that mere online accessibility in British Columbia, without more, is sufficient in every case.²⁰⁴

289. The Merits Decision proceeded from an incomplete constitutional analysis because the Tribunal did not distinctly examine characterization, constitutional applicability, territorial connection, and practical effects before asserting jurisdiction over the internet publications. Those inquiries could not be collapsed into a general proposition that provincial human rights legislation may sometimes apply to online conduct.

290. This ground is secondary to the statutory interpretation, Charter balancing, and procedural fairness grounds. Mr. Neufeld asks the Court to determine whether section 7 is constitutionally applicable to the impugned online publications under the division of powers framework identified above. If the Court concludes that the applicability question requires reconsideration by the Tribunal, Mr. Neufeld seeks remittal of that question under the clarified framework.

Q. Remedy

291. The ordinary remedy for reviewable error is to quash the affected decision and remit the matter to the statutory decision maker. However, the Court may decline to remit where, among other reasons, remitting the matter would stymie timely and effective resolution in a manner no legislature could have intended; it becomes evident that a particular outcome is inevitable and remittal would therefore serve no useful purpose; or public resources are being expended inefficiently through a continuing review-and-remit cycle.²⁰⁵

²⁰⁴ *Clearview AI* at paras 1-4, 8-11, 21-5, 49-62.

²⁰⁵ *Vavilov* at paras 139-42.

292. The Court should set aside the Merits Decision. Where the Court concludes that the only lawful disposition is dismissal of all or discrete allegations, it should dismiss them. Otherwise, it should remit the affected matters to a differently constituted panel with directions to:

- a. interpret section 7(1)(a) in accordance with its text, requiring the publication, properly interpreted in context, to indicate discrimination or an intention to discriminate against a person, group, or class because of a protected characteristic, as distinct from offensive or unpopular expression of opinion or criticism of ideas, policies, or practices;
- b. apply the stringent *Whatcott* threshold to each publication under section 7(1)(b), without applying the “hallmarks of hate” as proxies for detestation and vilification, and without treating criticism of ideas, policies, or practices as necessarily directed at persons;
- c. apply the limiting nexus required by “regarding employment” under section 13, including the statutory employment subject matter and the sufficient nexus required by *Schrenk*;
- d. conduct and explain a proportionate balancing of freedom of thought, belief, opinion and expression under section 2(b) of the *Charter* and the *Code*’s objectives; and
- e. permit Mr. Neufeld a fair opportunity to adduce relevant contextual evidence.

293. If the Court concludes that section 7(1)(a), properly interpreted, reaches political and public policy expression in the manner found by the Tribunal, and that this reach unjustifiably infringes section 2(b), the Court should grant the constitutional relief required under section 52(1) of the *Constitution Act, 1982*.

294. If the Court concludes that the Merits Decision proceeded from an incomplete constitutional analysis of the Tribunal’s authority to apply section 7 to the impugned internet publications, it should dismiss the affected allegations if the constitutional limits of provincial authority make that outcome legally inevitable. Otherwise, it should remit the applicability question for reconsideration under the clarified framework.

295. If the Court finds that only discrete portions of the Merits Decision are affected, it may set aside and remit those determinations. The liability findings and remedies are interrelated,

however. The cease-and-refrain and monetary orders should not remain operative where the underlying findings supporting them are set aside.

296. Because Mr. Neufeld submits the cumulative record establishes a reasonable apprehension of bias, any remittal should be to a differently constituted panel. Alternatively, the procedural unfairness and appearance concerns arising from the same record make a differently constituted panel necessary to ensure a fair redetermination.²⁰⁶

PART V – ORDER SOUGHT

297. Mr. Neufeld seeks:

- a. an order setting aside *Chilliwack Teachers' Association v Neufeld (No. 10)*, 2026 BCHRT 49;
- b. an order dismissing the complaint in whole or in part, including any allegations for which the Court concludes that dismissal is the only lawful disposition;
- c. alternatively, an order remitting the complaint or affected portions of it to a differently constituted panel of the Tribunal for redetermination in accordance with the Court's reasons;
- d. if the Court concludes that section 7(1)(a), properly interpreted, reaches Mr. Neufeld's political and public policy expression and thereby unjustifiably infringes section 2(b) of the *Charter*, a declaration under section 52(1) of the *Constitution Act, 1982* that the provision is of no force or effect to the extent of the inconsistency;
- e. if the Court concludes that the Tribunal proceeded from an incomplete constitutional analysis of its authority to apply section 7 to the impugned internet publications, an order dismissing the affected allegations if that outcome is legally inevitable or, alternatively, remitting the constitutional applicability issue to a differently constituted panel for reconsideration under the Court's reasons;

²⁰⁶ *Golden Valley Golf Course Ltd v British Columbia (Minister of Transportation and Highways)*, [2001 BCCA 392](#) at paras 38-45.

- f. if the Court finds that only discrete determinations are affected by reviewable error, an order setting aside and dismissing or remitting the determinations under sections 7(1)(a), 7(1)(b), or 13 that are affected;
- g. an order setting aside the remedies dependent on any quashed liability findings;
- h. costs against the CTA; and
- i. such further and other relief as this Court considers just.

ALL OF WHICH IS RESPECTFULLY

SUBMITTED. Dated: October 14, 2026



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Jody Wells

Counsel for the petitioner, Barry Neufeld

TABLE OF AUTHORITIES

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4.	<i>Baker v Canada (Minister of Citizenship and Immigration)</i> , [1999] 2 SCR 817
5.	<i>British Columbia Human Rights Tribunal v Schrenk</i> , 2017 SCC 62
6.	British Columbia, Legislative Assembly, <i>Official Report of Debates (Hansard)</i> , 35th Parl, 2nd Sess, Vol 11, No 1 (10 June 1993)
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10.	<i>Chilliwack Teachers' Association v Neufeld (No. 3)</i> , 2024 BCHRT 232
11.	<i>Chilliwack Teachers' Association v Neufeld (No. 6)</i> , 2024 BCHRT 337
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13.	<i>Clearview AI Inc. v British Columbia (Information and Privacy Commissioner)</i> , 2026 BCCA 67
14.	<i>College of Physicians and Surgeons of British Columbia v Health Professions Review Board</i> , 2022 BCCA 10
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16.	<i>Doré v Barreau du Québec</i> , 2012 SCC 12
17.	<i>Elmasry v Roger's Publishing Ltd</i> , 2008 BCHRT 378
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19.	<i>Golden Valley Golf Course Ltd v British Columbia (Minister of Transportation and Highways)</i> , 2001 BCCA 392
20.	<i>Human Rights Code</i> , RSBC 1996, c 210
21.	<i>Irwin Toy Ltd v Quebec (Attorney General)</i> , [1989] 1 SCR 927
22.	<i>Judicial Review Procedure Act</i> , RSBC 1996, c 241
23.	<i>Kempling v College of Teachers (BC)</i> , 2005 BCCA 327
24.	<i>Kinexus Bioinformatics Corp v Asad</i> , 2010 BCSC 33
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28.	<i>Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)</i> , [1992] 1 SCR 623
29.	<i>Palmer and Palmer v British Columbia Teachers' Federation and others</i> , 2008 BCHRT 322
30.	<i>R v Bryan</i> , 2005 BCCA 285
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33.	<i>RJR-MacDonald Inc v Canada (Attorney General)</i> , [1995] 3 SCR 199
34.	<i>RNL Investments Ltd v British Columbia (Agricultural Land Commission)</i> , 2021 BCCA 67
35.	<i>Ross v New Brunswick School District No. 15</i> , [1996] 1 SCR 825
36.	<i>Saskatchewan (Human Rights Commission) v Whatcott</i> , 2013 SCC 11
37.	<i>Schachter v Canada</i> , [1992] 2 SCR 679
38.	<i>School Act</i> , RSBC 1996, c 412
39.	<i>Silver Campsites Ltd v James</i> , 2013 BCCA 292

40.	<i>Société des casinos du Québec inc. v Association des cadres de la Société des casinos du Québec</i> , 2024 SCC 13
41.	<i>Vabuolas v British Columbia (Information and Privacy Commissioner)</i> , 2025 BCCA 83
42.	<i>Vancouver Area Network of Drug Users v Downtown Vancouver Business Improvement Association</i> , 2018 BCCA 132
43.	<i>Ward v Quebec (Commission des droits de la personne et des droits de la jeunesse)</i> , 2021 SCC 43
44.	<i>Yukon Francophone School Board, Education Area No. 23 v Yukon (Attorney General)</i> , 2015 SCC 25

SCHEDULE A: PUBLICATION-BY-PUBLICATION ANALYSIS

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
1	Oct. 23, 2017 Facebook post; Ex. 17, tab 1	Section 7(1)(a): yes; section 7(1)(b): no	Challenges SOGI resources, Ministry policy, “Gender Theory”, and “gender-affirming” treatment; supports traditional family values and removal of gender ideology teaching materials.	The Tribunal treated opposition to those materials as advocacy to reduce recognition and inclusion of “LGBTQ” persons in schools.	The Tribunal itself described the post as primarily a critique of the Ministry and SOGI when addressing section 7(1)(b). Its section 7(1)(a) reasons do not adequately explain how the position advanced in this particular post amounted to an intention or likely effect of adversely treating protected persons, rather than opposition to identified teaching materials and policy.
2	Nov. 21, 2017 Culture Guard speech; Ex. 17, tab 3	Section 7(1)(a): yes; section 7(1)(b): no	A policy speech concerning implementation of SOGI lesson plans. It calls for safe and inclusive schools, parental participation, discussion, compromise, and a different educational approach.	The Tribunal included the speech among publications it found advocated discrimination in District education.	The Tribunal recognized that the speech concerned curriculum and the school system when addressing section 7(1)(b). Its section 7(1)(a) reasons do not adequately reconcile the speech’s stated commitments to inclusion, parental participation, discussion, and compromise with the discriminatory intention or effect attributed to it. The speech must be assessed as a whole.

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
3	Dec. 18, 2017 Facebook post; Ex. 17, tab 4	Sections 7(1)(a) and 7(1)(b): yes	A religious and political critique of “gender fluid” teaching, government power, family policy, and “LGBTQ” political advocacy.	The Tribunal found that the post portrayed gay, lesbian, and “transgender” people as a powerful menace and tended to expose them to hatred; it also included the post in its finding concerning District education.	The reasons must justify, on a reading of the whole post, the move from its criticism of teaching, government action, and political advocacy to the Tribunal’s conclusions about protected persons themselves. The separate findings under sections 7(1)(a) and 7(1)(b) each require support from the publication and its context.
4	Jan. 1, 2018 email concerning Justine Hodge; Ex. 17, tab 5	Section 7(1)(a): yes; section 7(1)(b) not alleged in Appendix A	Urges political engagement with a prospective trustee about her SOGI position; addresses parental rights, treatment, religious views, and electoral choice; expressly opposes bullying “transgender” children.	The Tribunal included the email among publications it found advocated discrimination in District education.	The reasons do not adequately distinguish opposition to a prospective trustee’s position from advocacy of adverse treatment of “transgender” students or teachers. The email’s anti-bullying statement forms part of its meaning. Any inference drawn from responses to the email must distinguish what Mr. Neufeld published from what recipients subsequently wrote.
5	Mar. 19, 2018 Facebook post; Ex. 17, tab 8	Section 7(1)(a): no; section 7(1)(b): no	Criticizes medical professionals, “gender-affirming” treatment, and associated advocacy.	The Tribunal found no section 7 violation. For section 7(1)(a), it found the asserted harm too remote	The finding demonstrates that strongly expressed opposition was not, without more, sufficient for liability.

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
				because Mr. Neufeld lacked relevant influence over medical policy.	The Tribunal required a connection between the publication, the speaker's relevant influence, and an intended or likely adverse effect. Its reasons must establish that connection for each education publication rather than infer it from disagreement with SOGI policy alone.
6	Aug. 29, 2018 Facebook post; Ex. 17, tab 10 (Tribunal failed to number this post and included it at paras 19-21 under item 5)	Section 7(1)(a): yes; section 7(1)(b): no	Opposes teaching what the post calls gender-fluid ideology to all children; advances claims about childhood development and treatment; states a concern for children as its motivation.	The Tribunal treated the post as part of advocacy against SOGI-inclusive education, while finding that its overall tone conveyed concern for children rather than hatred under section 7(1)(b).	The section 7(1)(b) finding does not decide section 7(1)(a), but makes the post's subject and stated motivation relevant to that separate analysis. The reasons must explain how this publication's claims about teaching and treatment established the adverse treatment of protected persons attributed to it.
7	Oct. 19, 2018 Facebook post; Ex. 17, tab 11	Section 7(1)(a): yes; section 7(1)(b): no	Urges voters to support a trustee candidate opposed to SOGI lesson plans and criticizes the content of those plans.	The Tribunal treated the electoral appeal as advocacy against SOGI-inclusive education, while finding that the post conveyed views about curriculum rather than hatred toward "LGBTQ" people.	The reasons must explain why urging an electoral choice and a change in curriculum, in this particular publication, established an intention or likely effect of adversely treating protected students or teachers. Opposition to a policy cannot itself substitute for that explanation.

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
8	Oct. 22, 2018 Facebook post; Ex. 17, tab 12	Section 7(1)(a): yes; section 7(1)(b) not alleged in Appendix A	Critiques non-binary teaching and medical transition while telling “Lesbian, Gay, Transgender, Queer, Two Spirited” <i>et cetera</i> readers they have nothing to fear, condemning bullying, expressing care for students, and urging caution about treatment decisions.	The Tribunal included the post among publications it found undermined dignity and inclusion in District education.	The express assurances, anti-bullying statement, and expression of care are part of the publication’s meaning. The reasons do not adequately explain how the post, read as a whole, established an intention or likely effect of discriminatory treatment rather than disagreement about teaching and treatment.
9	Oct. 30, 2018 Facebook post; Ex. 17, tab 13	Section 7(1)(a): yes; section 7(1)(b) not alleged in Appendix A	Describes Mr. Neufeld’s decision to continue opposing SOGI 123 rather than ignore it or withdraw from public debate.	The Tribunal included the post among the Education Publications found to advocate discrimination.	The post identifies SOGI 123 as the subject of opposition but specifies no adverse treatment of a protected person. The grouped finding does not adequately explain how this declaration of political and moral opposition itself established discriminatory intention or effect under section 7(1)(a).
10	Nov. 17, 2018 fundraiser; Ex. 17, tab 15	Section 7(1)(a): yes; section 7(1)(b): no; assessed with tab 16	A fundraising appeal concerning vulnerable children, school practices, assessment, and “gender-affirming” treatment; calls for compassionate therapy rather than irreversible treatment.	The Tribunal assessed tabs 15 and 16 together and included both in its findings concerning stereotypes and exclusion in District education.	The reasons must explain how this fundraising appeal’s claims about vulnerability and treatment—including its assertion about “many Trans persons”—established intended or likely

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					discriminatory treatment in District education. Its purpose and context must be considered along with its words.
11	Nov. 20, 2018 Facebook post; Ex. 17, tab 16	Section 7(1)(a): yes; section 7(1)(b): no; assessed with tab 15	Nearly identical to the Nov. 17 fundraiser, but published as a Facebook post rather than a fundraising appeal. Addresses school practices, assessment, and treatment of vulnerable children.	The Tribunal assessed tabs 15 and 16 together and included both in its findings concerning stereotypes and exclusion in District education.	Their similarity does not answer whether differences in context, audience, purpose, or wording affected the conclusion for this post. The reasons must connect its claims about vulnerability and treatment to the discriminatory intention or effect attributed to it.
12	Dec. 9, 2018 Facebook post; Ex. 17, tab 17	Section 7(1)(a): no; section 7(1)(b): yes	Claims that “the trans agenda is eugenics”, that elites will “destroy all gay kids”, and that “snakes are everywhere”.	The Tribunal found that the post depicted a powerful menace and tended to expose “trans” people to hatred. It separately found no section 7(1)(a) violation.	The post names “elites” and an asserted agenda. The reasons must explain why, read with the linked article, those claims exposed protected persons themselves to detestation or vilification. The section 7(1)(b) finding requires its own justification, distinct from the section 7(1)(a) analysis.
13	Jan. 15, 2019 Board meeting; Ex. 17, tab 18	Section 7(1)(a): yes; section 7(1)(b) not alleged in	Opposes SOGI resources on stated religious, cultural, disability, parental authority, and child confusion grounds; objects to the	The Tribunal included the Board meeting remarks among publications it found advocated	The remarks were made in elected school board deliberation about identified resources and practices. That setting connects the

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		Appendix A	confidentiality practices described at the meeting.	discrimination in District education.	speech to District education, but does not itself establish discriminatory treatment. The reasons must explain how this particular policy position indicated an intention or likely effect of adversely treating protected persons.
14	May 9, 2020 Facebook post; Ex. 17, tab 21	Section 7(1)(a): no; section 7(1)(b): no	Questions the credibility of the WHO and Dr. Theresa Tam in discussing public health advice; includes an allegation about Dr. Tam's identity.	The Tribunal addressed the allegation about Dr. Tam but found no section 7 violation; for section 7(1)(a), it found the prospect of discriminatory harm too remote in the public health context.	The result demonstrates the importance of identifying the publication's target, the relevant sphere of influence, and the asserted discriminatory effect. An allegation concerning an individual's identity was not treated, without that connection, as sufficient for section 7(1)(a) liability.
15	July 24, 2020 newsletter; Ex. 17, tab 22	Sections 7(1)(a) and 7(1)(b): yes	A newsletter containing a letter to an MP about SOGI education, proposed conversion therapy legislation, treatment of minors, and institutional policy.	The Tribunal found that the newsletter met the section 7(1)(b) threshold and included it among the Education Publications found to indicate discrimination under section 7(1)(a).	The letter's legislative appeal, criticism of institutional practices, and statements relied on for the hate speech finding must be assessed in their full context. The reasons must identify why the publication met section 7(1)(b)'s threshold and, separately, how it indicated

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
					discriminatory treatment in District education under section 7(1)(a).
16	Sept. 24, 2020 Facebook post; Ex. 17, tab 23	Section 7(1)(a): no; section 7(1)(b) not alleged in Appendix A	Disputes gender fluid theory and urges love, compassion, and encouragement rather than clothing changes, hormones, or surgery.	The Tribunal found that, read in context, the post did not indicate an intention or likely effect of causing specific real-world harm to the Class.	The post's use of "delusion" did not itself establish a section 7(1)(a) violation. The findings of liability for other publications therefore require an explanation of the additional words, context, and connection to adverse treatment on which the Tribunal relied.
17	Oct. 20, 2020 Board meeting; Ex. 17, tab 24	Section 7(1)(a): yes; section 7(1)(b) not alleged in Appendix A	Expressly identifies parts of SOGI and ideas in a named document as the subjects of objection; criticizes unions and what the speaker calls "state-sponsored experimentation".	The Tribunal included these remarks in its finding that the Education Publications advocated exclusion.	The remarks identify particular educational materials and institutional practices as their targets. The Tribunal's general account of the Education Publications does not explain, without attention to these remarks, how the stated objections indicated adverse treatment of protected persons.
18	Nov. 10, 2020 Facebook post; Ex. 17, tab 26	Section 7(1)(a): no; section 7(1)(b) not alleged in Appendix A	Comments on an article concerning a "transgender" teenager's treatment and possible future consequences; expresses hope that the teenager does not die by suicide.	The Tribunal found no intended or likely specific discriminatory effect on the Class under section 7(1)(a).	The finding provides a comparator concerning the statutory connection required between a publication and adverse treatment. The reasons for liability elsewhere

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
					must explain that connection; objection to a publication's language does not supply it on its own.
19	Oct. 16, 2020 Rebel News interview; Ex. 17, tab 28	Section 7(1)(a): yes; section 7(1)(b) not alleged in Appendix A	States a belief about sex, questions SOGI instruction for children, raises concerns about age and treatment decisions, and says adults may present their gender as they wish.	The Tribunal included the interview in its findings concerning recognition and inclusion in District education.	The reasons must address the interview's distinction between adult choice and what children are taught. They must explain how the position expressed in this publication indicated adverse treatment in District education, rather than infer that result from disagreement with SOGI instruction.
20	Mar. 3, 2021 Facebook post; Ex. 17, tab 30	Section 7(1)(a): yes; section 7(1)(b) not alleged in Appendix A	Links to an article about increased transgender identification and tells parents with children in public school to "pull them out".	The Tribunal included the post among the Education Publications it found advocated exclusion.	The proposed action is addressed to parents concerning their own children's schooling. The reasons must explain how that call indicated an intention or likely effect of adversely treating protected persons in District education. Parental withdrawal and discriminatory treatment are distinct propositions.
21	Apr. 10, 2021 speech; Ex. 17, tab 31	Section 7(1)(a): yes; section 7(1)(b) not alleged in	Calls for officeholders' resignations, reconsideration of education policy, better mental health supports, and parental withdrawal from	The Tribunal included the speech among publications it found advocated exclusion in District education.	The requested actions concern officeholders, policy decisions, and parents' school choices. The reasons must distinguish criticism of teachers' asserted conduct or

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
		Appendix A	public education if policy is not reconsidered; criticizes “activist teachers”.		institutional policy from adverse treatment of teachers on a protected ground, and explain the connection attributed to this speech.
22	June 29, 2021 Facebook post; Ex. 17, tab 32	Sections 7(1)(a) and 7(1)(b): yes	Argues that aspects of sexual and gender education make children more vulnerable to exploitation; also makes claims about abuse by teachers and a possible connection between exploitation and trends in gender identification.	The Tribunal relied on the post in its findings concerning hate speech and discriminatory advocacy in education.	The reasons must identify the persons to whom each allegation is attributed. Claims about how education might be exploited by offenders, claims about teachers, and claims about protected persons are not interchangeable. Each statutory finding requires an explanation grounded in what this post says and to whom it refers.
23	Apr. 14, 2022 interview; Ex. 17, tab 33	Section 7(1)(a): yes; section 7(1)(b): no	A lengthy interview opposing SOGI instruction, particular library materials and teaching practices, and medical transition for children; expresses concern for children.	The Tribunal found section 7(1)(a) liability but not hate speech liability. Its Appendix records the interview’s references to “teachers from the LGBT” and its comparisons involving sex offenders.	The interview must be read in its full context, including the particular statements on which the Tribunal relied. Its conclusion under section 7(1)(b) does not determine section 7(1)(a), but the reasons must still explain how this publication’s words and setting established the adverse educational treatment found under the latter provision.
24	May 10, 2022 Rebel News	Section 7(1)(a): yes;	Discusses family history, parental rights, school practices, and	The Tribunal included the interview among	The interview’s expressed concern about parents and

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
	interview; Ex. 17, tab 34	section 7(1)(b): no	the speaker's concern that educators and parents holding traditional beliefs could be excluded from working with or raising children.	publications found to indicate discrimination in District education, but found no section 7(1)(b) violation.	educators, its criticism of school practices, and its references to risk of abuse require distinct treatment. The reasons must explain how those statements indicated adverse treatment of protected persons, rather than treating every asserted risk as an allegation against the protected class.
25	May 11, 2022 Facebook post; Ex. 17, tab 35	Section 7(1)(a): yes; section 7(1)(b): no	Advances religious propositions about sex, the soul, medical treatment, and resurrection; calls on Christians to speak "the truth in love" and to challenge education ministries.	The Tribunal included the post among publications found to indicate discrimination in public education.	The post's religious assertions and its call for public advocacy must be distinguished from a proposal to treat a protected person adversely. The reasons must identify how this particular publication, including its appeal to education ministries, satisfied section 7(1)(a).
26	May 17, 2022 Facebook post; Ex. 17, tab 36	Section 7(1)(a): yes; section 7(1)(b): no	Criticizes educators and state practices concerning gender related teaching without parental awareness or consent; compares the ideas being taught to a religion.	The Tribunal included the post in its finding concerning exclusion from SOGI-inclusive education.	The publication directs its criticism at educators' asserted practices, parental consent, and the ideas taught. The reasons must explain how those objections, in this publication, indicated adverse treatment of protected persons rather than treating criticism of the teaching as sufficient in itself.

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
27	June 12, 2022 Facebook post; Ex. 17, tab 37	Section 7(1)(b): yes; section 7(1)(a) not alleged in Appendix A	Critiques a linked video about a particular child's transition, disputes the treatment decisions portrayed, and predicts adverse future consequences.	The Tribunal found that the post tended to expose "trans" people to hatred under section 7(1)(b).	The reasons must explain how this post's discussion of a particular portrayal and predicted consequences, read as a whole, crossed from criticism of treatment and individual circumstances to detestation or vilification of "trans" people as a protected group.
28	Aug. 2, 2022 Facebook post; Ex. 17, tab 39	Section 7(1)(a): yes; section 7(1)(b): no	Describes the speaker's exclusion from schools, disputes what he calls "gender fads", emphasizes academic achievement, and opposes puberty blockers and hormones for children.	The Tribunal included the post among those found to advocate against SOGI-inclusive education.	The reasons must explain how the post's account of his own exclusion and its objections to educational and medical approaches indicated adverse treatment of protected persons. Disagreement with those approaches does not, without that explanation, establish the statutory finding.
29	Aug. 18, 2022 Facebook post; Ex. 17, tab 40	Section 7(1)(a): no; section 7(1)(b) not alleged in Appendix A	States opposition to approval of gay couples for adoption and discusses pediatric organizations' positions on "gender-affirming" treatment.	The Tribunal found no section 7(1)(a) violation, treating the prospect of specific discriminatory harm as too remote.	This comparator states a position about gay couples directly, yet did not result in section 7(1)(a) liability. The different outcomes require attention to the asserted educational effect and Mr. Neufeld's relevant influence for each Education Publication; neither its

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
					subject matter nor trustee status alone completes that analysis.
30	Sept. 24, 2022 RH Media interview; Ex. 17, tab 41	Section 7(1)(a): yes; section 7(1)(b): no	A re-election interview disputing SOGI instruction and school confidentiality practices, raising concerns about treatment of children, and urging parents to participate in parent advisory committees or run for trustee.	The Tribunal included the interview in its findings concerning discriminatory advocacy in District education but found no hate speech violation.	Electoral participation, criticism of institutions, statements about particular actors, and statements about protected persons must be assessed according to what each says. The reasons must explain which statements in this interview indicated adverse treatment under section 7(1)(a), rather than treating participation in school governance as that treatment.
31	Oct. 19, 2022 Empower Hour interview; Ex. 17, tab 45	Section 7(1)(a): yes; section 7(1)(b): no	Says some children experience dysphoria but SOGI confuses many more; challenges its educational and scientific premises; criticizes activists, government, media, unions, and the ARC Foundation; compares affirmation to enabling addiction or anorexia. Notes that some gay and lesbian teachers oppose SOGI.	The Tribunal included the interview among the Education Publications it found advocated exclusion in District education.	The interview identifies institutional actors, curriculum, scientific claims, and treatment approaches as subjects of criticism. Its express acknowledgment that some gay and lesbian teachers oppose SOGI also bears on the group-based meaning attributed to it. The reasons do not adequately explain how this interview's particular statements and analogies indicated an intention

#	Publication / Exhibit	Findings	Actual thesis and target	Tribunal attribution	Principal vulnerability
					or likely effect of adversely treating protected persons in District education, rather than opposition to the identified policies and approaches.

Section 13 Materials Outside Appendix A

Exhibit material	Use by Tribunal	Principal vulnerability
Exhibit 17, tab 46	Cited as support for the connection between Mr. Neufeld’s statements and the Class members’ employment. The statement compares alleged child abuse in “today’s sexually charged school environments” with abuse in residential schools.	The statement concerns alleged conditions in schools. The reasons must explain how it bears on an adverse employment effect for teachers with protected characteristics, rather than treating a criticism of school conditions as sufficient to establish that connection.
Exhibit 17, tab 47	Cited in the same employment analysis for statements about teachers as “groomers” and an environment said to attract predators.	These statements concern teachers described by reference to their alleged conduct, not by reference to a protected characteristic. The Tribunal did not identify how the complete publication addressed teachers because of sexual orientation or gender identity. It could not substitute criticism of teachers’ alleged conduct for a statement about teachers with protected characteristics merely by treating “teachers” and the protected Class as interchangeable.
Exhibit 17, tab 48	The 2024 Ally Day/candy repost was discussed in the Tribunal’s account of Teacher B’s experience.	The Tribunal placed this event beyond Mr. Neufeld’s trustee tenure and the complaint timeframe. Its relevance to Teacher B’s later experience must be distinguished from proof of an adverse employment effect during the earlier period. The reasons should make clear what conclusion, if any, rests on this later repost.