

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

BETWEEN:

**GLEN HANSMAN**

**APPELLANT**  
(Respondent)

-and-

**BARRY NEUFELD**

**RESPONDENT**  
(Appellant)

-and-

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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## **PART I – OVERVIEW AND STATEMENT OF FACTS**

### **A. Overview**

1. Freedom of debate can be threatened in many ways, including through the misuse of legislation which was enacted to protect it. The purpose of anti-SLAPP laws gets turned on its head if such laws are used to protect people who use libel as a means to shut down debate on matters of public interest.
2. The power of institutions such as the BCTF is enough to keep many people silent on legitimate topics of public debate. When allied with other public sector unions, the provincial government and myriad well-funded special interest groups, all with well-established media capabilities, the prospect of challenging officially-sanctioned narratives becomes even more daunting.
3. The Respondent’s initial FaceBook posting about SOGI<sup>1</sup> commenced: “ *Ok, so I can no longer sit on my hands. I have to stand up and be counted.*” One must ask why an elected school board trustee would be hesitant to criticize this program? The answer is, as he predicted, that to do so was “*At the risk of being labeled a bigoted homophobe ...*”.<sup>2</sup>
4. A properly functioning public arena accommodates diverse opinions on such controversial subjects as gender ideology in schools. Defamation law plays a vital role in protecting this vital feature of democracy, a role which requires that courts remain accessible to those who speak out on matters of controversy. As noted by the Court of Appeal (para. 65):

....the potential chilling effect on future expression by others who might wish to engage in debates on this or other highly charged matters of public interest—that is, the risk that people would withdraw or not engage in public debate for fear of being inveighed

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<sup>1</sup> The Sexual Orientation and Gender Identity (SOGI) program introduced in BC schools.

<sup>2</sup> FaceBook Posting Oct. 23/17 AR, Vol I, pp. 5-6, BCCA, para. 10.

with negative labels and accusations of hate speech with no opportunity to protect their reputation.

5. Elected school boards provide a democratic means of giving communities a voice about what takes place in public schools. As this case demonstrates, sometimes school board trustees face a difficult choice: either keep silent about what government, unions and special interest groups are implementing in the schools or, in the alternative, express concerns about the impact such programs may have on the well-being of students.
6. It is clear that the Respondent criticized SOGI in blunt terms but it is equally clear that he never expressed hatred towards LGBTQ individuals, nor did he seek to exclude any particular students from the schools or demonstrate racism, transphobia, religious bigotry or other such defects. Such imputations represent nothing more than an attempt to punish critics and shut down debate on matters of legitimate concern.
7. Whether the role of schools should include promoting gender ideology and whether teachers, rather than parents, are best able to address such personal and impactful subjects with children are matters which raise legitimate differences of opinion. Nobody, let alone elected school trustees, should be intimidated from expressing honestly held opinions on such matters.
8. Despite much material in the record and the Appellant's submissions, this is not a debate about the merits of gender ideology in the schools. Whether SOGI is a good program designed and implemented by compassionate people to redress the plight of vulnerable people is entirely irrelevant. The issue herein is simply whether the Respondent is entitled to his day in court on this meritorious libel claim.
9. This matter does not require striking a balance between conflicting values. Both freedom of debate and the right to vindicate one's reputation are advanced by ensuring that courts do not close their doors to people willing to speak out on matters of controversy.

10. To portray criticism of SOGI as attacking members of the “LGBTQ community” is a tactic intended to smear critics and shut down debate. Such a response to other perspectives contradicts the very values of inclusivity and diversity used to promote SOGI. As the Respondent proclaimed in his speech of November 21, 2017:

“I have a democratic right to speak my mind. But it is obvious that supporters of SOGI are the true bullies and want to shut down any further discussion.”<sup>3</sup>

11. This case is a libel claim based on 11 separate publications, as pleaded. The Chambers Judgment failed to mention most of them, scrutinised the details of none of them and misapprehended fundamental features of defamation law. The action was dismissed with no indicia of a SLAPP and at an early stage, prior to production of documents and examinations for discovery.
12. The message of the Chambers Judgment is that those able to use libel as a way to destroy critics and shut down debate are welcome to do so without legal consequences. Such a message threatens the very existence of an effective public arena and raises concern about whether the courts remain above the political and ideological pressures affecting other institutions.

**B. Statement of Facts**

13. The Respondent (“Neufeld”) relies on the facts set out by the Court Appeal, supplemented as follows:
14. Contrary to his submissions, the Appellant (“Hansman”) is not being sued for his quest for safe schools, his “social justice” perspectives, his role in designing and promoting SOGI or anything other than the 11 specific publications as pleaded.<sup>4</sup>

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<sup>3</sup> AR Vol 5, p. 8.

<sup>4</sup> AR, Vol. I, pp. 80-101, ANCC.

15. There is no evidence of public debate about SOGI within any school board or elsewhere in B.C. until Neufeld spoke out about it despite an advanced state of implementation.
16. Prior to Neufeld's first public statement, concerns about promoting "transgenderism" with children had been publicly expressed elsewhere. For example, in 2015, Dr. Paul McHugh, former psychiatrist-in-chief at Johns Hopkins Hospital pointed out that sex change is, in fact, biologically impossible, that between 70- 80% of children expressing confusion about their gender grow out of it naturally and that puberty blocking steroids cause serious side effects.<sup>5</sup>
17. Neufeld is a democratically elected school board trustee chosen by the voters in Chilliwack, including parents of children attending schools in that area. As confirmed by the BC School Trustees Association ([British Columbia School Trustees Association](#)) trustees are to "engage their communities in building and maintaining a school system that reflects local priorities, values and expectations."
18. There is no evidence that anybody in Chilliwack has endorsed Hansman or any other public sector union presidents or transgender activists to speak for their children or to promote the BCTF's "social justice" agenda, including SOGI, in the public schools.
19. Neufeld's first public comment about SOGI mentioned that Russia and Paraguay "*...had the guts to stand up to these radical cultural nihilists*". He provided a link to "Parents Defeat Gender Ideology in Paraguay" explaining what he means and which is in the record.<sup>6</sup>

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<sup>5</sup> AR, Vol. V, p. 3, Aff. of R. Britton, Ex. A, "Johns Hopkins Psychiatrist: Transgender is 'Mental Disorder;' Sex Change 'Biologically Impossible'.

<sup>6</sup> AR, Vol. II at p. 84, Hansman Affidavit, Exhibit D.

20. The public portrayal of Neufeld as a hateful, intolerant, homophobic religious bigot and a threat to the safety of children in schools commenced on October 24, 2017, the day after Neufeld first spoke out about SOGI.<sup>7</sup>
21. On October 24, 2017, the Vancouver Sun, Huffington Post and Global News each published articles which contained Hansman’s statements, including:

Vancouver Sun:

“He [Neufeld] should step down or be removed.”

“It’s not OK. The public school system in this province and in Canada have the **obligation to ensure safe and inclusive** school environments for all kids **regardless of race, nationality, or religion**. They have to proactively address **sexism and misogyny**, they have to address **transphobia and homophobia and racism**.”<sup>8</sup>

Huffington Post:

“I’m always concerned when I hear **intolerant voices**....”

“regardless of **his bigoted views**.....he has responsibilities....for ensuring a safe and inclusive school...if he's not going to step down himself then the school board or somebody else needs to make that decision.....

....will either step down or **whether he likes it or not, members of the LGBTQ school community are here to stay**”<sup>9</sup>

Global News:

“...Neufeld should resign because **he has violated his obligations** as a school board trustee to ensure that students and staff have a safe, inclusive environment.”

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<sup>7</sup> AR, Vol. V, p. 30, Aff. #1 of B. Neufeld, para. 2.

<sup>8</sup> AR Vol. I, p. 84, ANCC para. 14 and Vol. II, p. 90, Vancouver Sun.

<sup>9</sup> AR Vol I, p. 85, ANCC para. 15, Global News.

“...said trustees with **faith-based views** need to figure out how they'll work in a secular public school system.”

"If they're not... able to keep their views in check or keep them private, then they probably shouldn't be serving as trustee or working in the education system anymore."

“whether he likes it or not, **members of the LGBTQ community are here to stay....**”<sup>10</sup>

22. In prompt response to the initial backlash, Neufeld posted this further message on Facebook:

“My post on Facebook has created a lot of controversy and first of all, I want to apologize to those who felt hurt by my opinion, including members of the Chilliwack Board of Education. I am critical of an educational resource, not individuals. Those who have worked with me for over 24 years know that I DO believe in inclusion and a safe learning environment for all of our students; that they should be protected from all forms of bullying and intimidation.

I believe that in a free and democratic society, there should be room for respectful discussion and dissent. I firmly believe that implementation of the SOGI 123 resources needs to be reviewed by engaging parents and teachers in conversation on this topic before full implementation.”<sup>11</sup>

23. On November 21, 2017, Neufeld made his most comprehensive statement about SOGI in a speech, explaining his concerns at length. As Hansman indicates (AF, footnote 34), a video of the speech is available online and a text of it is in the record.<sup>12</sup>
24. On January 15, 2018, the Canadian Union of Public Employees Local 411 announced it had filed a complaint with the BC Human Rights Tribunal about what

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<sup>10</sup> AR, Vol I, p. 85, ANCC, para. 16, Huffington Post.

<sup>11</sup> AR Vol I, p. 55, BCCA Reasons, para. 12.

<sup>12</sup> AR, Vol. V, pp. 7-14, Aff. of R. Britton, Ex. D, (text of speech).

it proclaimed to be the “*discriminatory effects of Trustee Neufeld’s transphobic and homophobic statements.*”<sup>13</sup>

25. In January, 2018, the BCTF instigated a separate but almost identical complaint to CUPE’s complaint at the BC Human Rights Tribunal. Despite roughly 4.5 years since instigating these complaints, there is no evidence of even a hearing date on either of them nor is there even any evidence that either union has any union member claiming to be affected by Neufeld’s views.<sup>14</sup>
  
26. On January 16, 2018, the BCTF’s Chilliwack local passed a resolution of non-confidence in the school board for not censuring Neufeld. The next day, Hansman’s comments about Neufeld in various community newspapers included:
 

“...teachers and educators will continue to rally together to fight **hatred.**”

“Sometimes our beliefs, values, and responsibilities as professional educators are challenged by those who **promote hatred.**”<sup>15</sup>
  
27. On January 18, 2018, the Chilliwack school board convened a special meeting and passed a resolution seeking to have Neufeld resign as a trustee. He refused to resign.<sup>16</sup>
  
28. On January 19, 2018, Neufeld responded with his own press release to once again confirm that he supported all students regardless of sexual orientation, gender identity, race, religion or background and to again confirm that:

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<sup>13</sup> AR, Vol. V, p. 16, CUPE press release.

<sup>14</sup> BCTF complaint, Exhibit H to Hansman Affidavit, AR Vol. II at 105-118; CUPE complaint, Exhibit BBBB to Dettman Affidavit, AR Vol. IV at 149-150.

<sup>15</sup> AR, Vol I, p. 87, ANCC, para. 20.

<sup>16</sup> AR, Vol. V, p. 17, School District 33 press release.

I have simply taken issue with one facet of the SOGI 1-2-3 learning resources; the teaching of the controversial gender-fluid theory as fact. Despite the pressure to resign, I believe that I must remain on the Board to be a lonely voice protecting impressionable children who I believe will be confused and harmed, resulting in increased occurrences of gender dysphoria in at-risk children.<sup>17</sup>

29. The harassment and persecution of Neufeld attracted some national media attention. In regard to CUPE’s complaint, one article noted it to be “*an important freedom-of-speech case*”, recognising that Neufeld’s argument is:

on the contested terrain of children's "best interests" in transgender education, his role is that of proxy for parents' rights to deal with their children's sensitive health issues as they see fit.<sup>18</sup>

30. On April 10, 2018, The Star Vancouver newspaper, published Hansman’s statements, including:

“...his **public comments about trans people have created an unsafe work environment** for teachers and **exposed trans people to hatred.**”

“...his comments have been largely restricted to **transphobic comments...**”

“ he is creating a school environment for both our members and students that is **discriminatory and hateful,**”<sup>19</sup>

31. On April 12, 2018, CityNews1130 published Hansman’s statements, including:

“tip toed quite far into **hate speech**”

“Whether it’s a **transphobic** comment, or a **racist** one or a **misogynistic** one, that simply cannot stand because public **schools**

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<sup>17</sup> AR, Vol. V, p.18, “Statement in response to School District 33 press release, Jan 19/18.

<sup>18</sup> AR, Vol. V, p. 19, Aff. of R. Britton, Ex. H *National Post*, Jan.24/18, "Barbara Kay: B.C. school official protests 'transgender education' - and pays the price".

<sup>19</sup> AR, Vol I, p. 88, ANCC, para. 24; AR Vol. II, p. 17, The Star Vancouver “ B.C. teachers ’union files complaint against Chilliwack school trustee Barry Neufeld over allegations of transphobia”.

**welcome all students, regardless of their race, their culture, their sexual orientation or their gender identity.”**<sup>20</sup>

32. On April 13, 2018, CBC radio published Hansman’s statements, including:

**“shouldn't be anywhere near students”**

**“hateful public comments about trans people ..”**<sup>21</sup>

33. On April 22, 2018, CityNews 1130 published Hansman’s statements including:

**“...the hateful comments made by Trustee Barry Neufeld...”**<sup>22</sup>

34. On September 16, 2018, under the headline *“BCTF President and speaks out against anti-refugee and anti-LGBTQ school trustee candidates”*, CityNews 1130 published Hansman’s statements, including:

**“It is extremely problematic to have somebody who is running as a school trustee continuing to spread hate about LGBTQ people — especially trans people — and also be out there, making vile comments about refugees and immigrants, as a group.”**

**“...like it or not, there’s still racism and misogyny that exists in our school system.”**

**“Anyone who is seeking to be a school trustee has to commit to eradicating those things, not spreading hate and not spreading bigotry.”**<sup>23</sup>

35. On October 19, 2018, after this litigation commenced and the very day before the school board trustee election, Hansman was back in the media directing the public

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<sup>20</sup> AR, Vol I, p. 89, ANCC, para. 25; AR Vol. II, p. 21, CityNews 1130 “Controversial Chilliwack Trustee the subject of Human Rights Tribunal Complaint”.

<sup>21</sup> AR, Vol I, p. 89, ANCC, para. 26; AR Vol. II, p. 24 CBC, “Controversial Chilliwack school trustee facing human rights complaint from BCTF”.

<sup>22</sup> AR, Vol I, p. 90, ANCC, para. 28; AR Vol. II, p. 28, CityNews 1130, “Rallies for, against SOGI resource planned in Vancouver”.

<sup>23</sup> AR, Vol I, p. 90, ANCC, para. 29, CityNews; AR Vol. II, p. 32, CityNews 1130, “BCTF President and speaks out against anti-refugee and anti-LGBTQ school trustee candidates”.

to a publication called PressProgress which republished his imputations of hatred, religious bigotry and misogyny, adding anti-semitism to the list. As conveyed by the Chilliwack Progress:

“ he [Hansman] stands by his statements”

“His other **misogynist** and problematic statements reported by Press Progress are also cause for alarm and not becoming of a school trustee”.<sup>24</sup>

36. On October 22, 2018, Hansman’s statements about Neufeld as published by CBC Radio included:

“**Hate and bigotry** have no place on school boards”<sup>25</sup>

37. As noted by the Court of Appeal (para. 14), the subject publications are pleaded to convey, both expressly and by innuendo, meanings that Neufeld:

- (i) promoted hatred;
- (ii) committed hate speech;
- (iii) was actuated by hatred of certain students;
- (iv) was discriminatory against gay and/or transgender students;
- (v) promoted hatred toward gay and/or transgender students in the school system;
- (vi) made it unsafe for students in the school system;
- (vii) was unfit to hold public office as a school board trustee;

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<sup>24</sup> AR, Vol. II, Chilliwack Progress, pp.55-58, Press Progress, pp. 46-54.

<sup>25</sup> AR, Vol I, p. 97, ANCC, para. 44, CBC Radio.

- (viii) violated ethical and/or legal duties applicable to school board trustees;
- (ix) presents a safety risk to students;
- (x) has bigoted views which threaten the safety and inclusiveness in schools;
- (xi) has lied to the public about what SOGI 123 includes;
- (xii) is a religious bigot who imposes his religious views on some students in a manner which makes it unsafe for such students;
- (xiii) is racist, discriminatory, sexist, misogynist, transphobic and/or homophobic;
- (xiv) has violated the rights of students under the Canadian Charter of Rights and Freedoms and BC Human Rights Code;
- (xv) regards people who support transgender students as child abusers;
- (xvi) is an outlier and part of a vanishing breed of racists;
- (xvii) published knowingly false statements to injure the public interest; and
- (xviii) is unfit to be a school board trustee because of his age.<sup>26</sup>

38. Hansman deposed at length about the background and objectives of SOGI but he never deposed to a belief in the defamatory expressions at issue.<sup>27</sup>

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<sup>26</sup> AR, Vol I, p. 97, ANCC, para. 34.

<sup>27</sup> AR, Vol. 1, p. 65, BCCA Reasons, para. 43.

39. Statements such as he “promoted **hatred**” (Jan. 1/18), exposed [trans people] to **hatred**” (April 10/18) “tip toed quite far into **hate speech**” (April 12/180), made “**hateful**” public comments about trans people (April 13/18) and “continuing to **spread hate** about LGBTQ people (Sept. 16/18) are pleaded as imputations of criminal conduct.<sup>28</sup>
40. To wilfully promote hatred against any identifiable group is a criminal offence as prohibited by Section 319 (2) of the Criminal Code of Canada. Section 318(4) defines “identifiable group” is as:
- ...any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.<sup>29</sup>
41. Contrary to the Appellant’s argument<sup>30</sup>, the publications did not indicate that the meaning of words such as hatred and hate speech was confined to work place discrimination under the B.C. Human Rights Code. The publications provide no such limited context and, in fact, such words were expressed concurrently with imputations of bigotry, transphobia and intolerance of LGBTQ students.
42. In addition to the above specific 11 publications, Hansman allegedly (no documents produced yet) orchestrated demonstrations which republished imputations of hatred and bigotry and which were covered by the media. Pictures of some of the placards are in the record.<sup>31</sup>
43. Contrary to assertions at AF paragraphs 5, 63, 112, and 121, there is no evidence that the “LGBTQ community” endorsed Hansman as their spokesperson or that it is

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<sup>28</sup> AR, Vol. I, p. 15, ANCC, para. 35.

<sup>29</sup> Section 319 (2) & 318(4) of the *Criminal Code of Canada*.

<sup>30</sup> AF paragraph 34

<sup>31</sup> AR, Vol I, p. 90, 93, ANCC paras. 27 and 33; AR Vol. II, p. 59,60, “Hate Cannot Educate”, “We are here for ALL families” and “Transphobic school trustee must go”.

monolithic in its views about SOGI or that it prefers the use of libel over civil discourse. Whatever Hansman deposes his personal experiences and motives to have been, there is no evidence that statements at issue herein were expressed on behalf of any “vulnerable group”.

44. Contrary to AF paragraph 41, while others, including B.C.’s Minister of Education Rob Fleming and the provincial NDP’s Vice President and transgender activist Morgane Oger, participated in the smear campaign, (ANCC paras. 31-32, AR, Vol. I, p. 92 and Chambers Judgment, para. 40, AR, Vol I, p. 11), Hansman is only being sued for the statements he personally made.
45. Contrary to AF paragraph 65, Neufeld was not “harshly critical of support for transgender students...”. He was, however, harshly critical of a program which he believes to harm such students. He simply has a different opinion about how such students should be supported and, from his perspective, SOGI does more harm than good.
46. Contrary to AF paragraph 84, imputations of racism were directed at all anti-SOGI candidates. AF footnote 116 refers to a publication with the headline “BCTF president speaks out against anti-refugee, anti-LGBTQ school trustee **candidates**”. [plural]<sup>32</sup>
47. The transcript of proceedings before Justice Ross includes this passage reflecting Neufeld’s position about who was targeted in the above September 16, 2018 publication:

MR. JAFFE: .....there he [Hansman] is **again publicly condemning people** opposed to SOGI as --and **characterizing them as spreading hate**. And again, even if this comment -- it doesn't clearly refer to the plaintiff and then maybe technically it wouldn't be actionable in of itself, the part of Mr. Neufeld, it's reflective of an agenda by Mr. Hansman to put out a certain message **directed at anti-SOGI people**, and it's evidence of malice by the words he chooses to use.”

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<sup>32</sup> AR Vol. II, p. 32, Thorsell Aff., Ex. D.



MR. JAFFE: Or one might equally argue that **he's just condemning all the anti-SOGI people as people who spread hate**. If you read the whole article, you'll see that that seems to be what he's saying is that the anti-SOGI people -- we can go there.<sup>33</sup>

48. In addition, by September 16, 2018, the imputation of racism, along with other forms of bigotry, had been well established. For example, racism was mentioned in the Vancouver Sun on October 24, 2017 along with sexism, misogyny, transphobia and homophobia. On April 12, 2018, it was mentioned in CityNews 1130 along with references to hate speech, transphobia and misogyny.<sup>34</sup>
49. Neufeld suffered damages to his reputation, indignity, personal harassment, stress, anxiety, mental and emotional distress, stigmatization, humiliation and isolation in his role as a school board trustee. Such damages are pleaded at paragraphs 46 and 47 of the ANCC (AR, Vol. 1, pp. 97-8) and he deposed such facts to be true.<sup>35</sup>
50. Dishonesty was also imputed by implying that Neufeld misrepresented the substance of SOGI. However, it was Hansman who was dishonest with the public on this subject. AF footnote 24 contains a link to Global News coverage and at approximately 4.10 into that interview, there is this exchange:

Interviewer: "Then he [Neufeld] goes on to say, teachers must not refer to boys and girls, they are merely students, they cannot refer to mothers and fathers either. Is that true?"

Hansman: "No, I have no idea what on earth he's talking about."

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<sup>33</sup> AR Vol. V, p. 87. Lines 4-13 and line 47 to P. 88, line 4.

<sup>34</sup> AR, Vol I, p. 84, ANCC para. 14, AR, Vol.II, p. 90 Vancouver Sun "Chilliwack school trustee slammed for comments about LGBTQ youth and anti-bullying curriculum"; AR, Vol I, p. 89, ANCC para. 25.

<sup>35</sup> AR, Vol. V, p. 30, Neufeld Aff. #1, para. 3.

51. In fact, Hansman knew exactly what Neufeld was referring to. The SOGI materials at: <https://www.sogieducation.org/><sup>36</sup>, under “First Steps for Using Inclusive Language”, includes these instructions to teachers:

USE GENDER-FREE PHRASING

Talk in a way that does not specify a gender, sex, or sexual orientation unless it is pertinent to the comment.

e.g., "Good morning everyone." instead of "Good morning boys and girls."

e.g., "Students should turn in their papers." instead of "Each student should turn in his/her paper."

USE LANGUAGE FOR ALL FAMILIES

Refer to a student's "family" or "parents" instead of "mom and dad" to include students who may have single, 2SLGBTQ+ parents, or alternate guardians.

e.g., "Please tell your parents or adults." instead of "Please tell your mom or dad."

52. Following the initial flurry of defamatory publications, there was some media coverage recognizing Neufeld’s right to express his views. For example:

“ I've known Barry for a long time and he is really a great and good person” and “People who oppose bullying should oppose bullying in all its forms”<sup>37</sup>

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"Both [Hansman and Neufeld] believe in children's rights and believe in justice and care of the child - believe in all the same things but just look at it very, very differently"<sup>38</sup>

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<sup>36</sup> AR, Vol II, p. 64, Hansman Affidavit, para. 9.

<sup>37</sup> AR, Vol. IV, p. 15, Kent-Chilliwack MLA Laurie Throness, October 26, 2017, Agassiz Harrison Observer

<sup>38</sup> AR, Vol. IV, p. 19, Trinity Western University Professor Mathew Etherington, October 26, 2017, CBC News



“Having an opinion that goes against what some people feel is acceptable is not a reason to suggest he should be fired. B.C. Teachers' Federation president Glen Hansman's lack of tolerance and acceptance of Neufeld while demanding it from him is bigotry.”<sup>39</sup>



“How ironic that the outpouring of vicious name-calling is done by those who claim to oppose bullying.

Even if Mr Neufeld is dead wrong in opposing SOGI 123, concern for the well-being of children should motivate all parents and all politicians to have an honest discussion and frank debate about the merit (or lack thereof) of this program.”<sup>40</sup>

53. There is also evidence that, after Neufeld spoke out about SOGI, certain groups sought to de-platform other critics of SOGI and prevent them from speaking by shutting down venues in B.C.<sup>41</sup>
54. After Neufeld spoke out on the need for a debate on this subject, similar concerns expressed by others appeared in the Canadian media. For example, after reviewing the adverse implications for children, Dr. Jordan Peterson opined that the silence of the majority on this subject will “*generate a state of affairs among our children and*

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<sup>39</sup> AR, Vol. IV, p. 39, Steven James, Oct. 30/17, The Province (letter to the editor)

<sup>40</sup> AR, Vol.III, p. 70, Dettman Aff., Ex E, “Trans lobby seeks to silence healthy debate”, The Post Millennial.

<sup>41</sup> AR, Vol. V, p. 57, “Thousands of UBC staff call for cancellation of anti-SOGI event”, CityNews 1130, June 20, 2019; AR, Vol. V, p. 60, “UBC employee association calls for cancellation of talk by controversial anti-SOGI activists Jenn Smith” Georgia Strait, June 21, 2019”; AR, Vol. V, p. 69 “Protestors detained at controversial UBC talk about sexual orientation, gender identity lessons in schools”, The Star.com, June 24, 2019.

*adolescents that we will come in the decades to follow to deeply and profoundly regret.”*<sup>42</sup>

55. The need for an objective debate about gender ideology in the schools was also addressed by journalist Barbara Kay, who concluded:

It is clear that something is going terribly wrong with regard to gender teaching in Ontario classrooms. Ontario must set up an investigative task force, composed of disinterested educators, disinterested gender researchers and parents, to objectively evaluate the teaching of gender identity in public schools.<sup>43</sup>

56. There has been no examinations for discovery nor production of documentation. Hansman’s documents related to communications with the media, union members and others have not been produced. Neufeld applied for production of documents roughly 3 weeks before the *PPPA* application was filed but the Chambers Judge refused to consider it.<sup>44</sup>
57. The Chambers Judgment referred to some of the words from some of these publications but reflects no scrutiny of the details of any of them, let alone all of them. It reflects no analysis of each publication in the context of elements required for the fair comment defence.<sup>45</sup>
58. The Chambers Judgment also disregarded evidence of damages, gave no effect to the presumption of damages and failed to distinguish between a debate and the expressions at issue. It also made no findings about which defamatory meanings had been established.

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<sup>42</sup> AR, Vol. V, p. 64 “Jordan Peterson: Gender politics has no place in the classroom”, National Post, June 21, 2019.

<sup>43</sup> AR, Vol. V, p. 74 “Barbara Kay: When gender identity education and theory goes wrong”, National Post, June 25, 2019.

<sup>44</sup> AR, Vol. I, pp. 150-158, Notice of Application for documents.

<sup>45</sup> AR, Vol I, BCCA Reasons, paras. 26 and 27.

**PART II – STATEMENT OF QUESTIONS IN ISSUE**

- A. Was the Court of Appeal correct that there are grounds to believe the defence of fair comment would not succeed at trial as per PPPA section 4(2)(a)?
- B. Was the Court of Appeal correct that the chilling effect on both parties is within factors to be weighed in determining the public interest as per PPPA section 4(2)(b)?

**PART III – STATEMENT OF ARGUMENT**

- A. Was the Court of Appeal correct that there are grounds to believe the defence of fair comment would not succeed at trial as per PPPA section 4(2)(a)?**
59. The Court of Appeal recognised that, in libel cases, an unfocussed look at only parts of some of the publications at issue and with no scrutiny of such important details as the meanings of the words, is insufficient.
60. It confirmed an obvious point overlooked by the Chambers Judge: before dismissing libel claims on the basis of a fair comment defence, each of the publications must be scrutinized to determine whether the requisite elements for that defence are established, stating, at paragraphs 26 and 27:
- [26].....As this Court observed in *Weaver v. Corcoran*, 2017 BCCA 160 at para. 83: “where separate publications are pleaded as independent causes of action, absent referability or other inextricable linkage, the meaning of each should be determined independently, in the immediate context in which the words are used” (emphasis added).
- [27] The defence of fair comment must also be considered for each of the separate publications pleaded: Roger D. McConchie & David A. Potts, *Canadian Libel and Slander Actions*, (Toronto: Irwin Law, 2004) at 258. In my view, the judge’s failure to consider the specific expressions led him to overlook the constituent elements of the fair comment defence as applied to each expression.....
61. In addition, without any findings about which defamatory meanings were established, the Chambers Judge did not even reach the starting point by which the

fair comment defence could be considered and by which any sort of weighing exercise could be conducted.

62. Had such details as the words used and the meanings conveyed by these publications been considered by the Chambers Judge, he would have recognized that a number of them are clearly incapable of a fair comment defence.
63. For example, Hansman’s statements in the Global News and Huffington Post included “*whether he likes it or not, members of the LGBTQ school community are here to stay*”. An innuendo that Neufeld seeks to exclude the LGBTQ from the schools was conveyed without a shred of evidence.<sup>46</sup>
64. The above innuendo was conveyed concurrently with another innuendo, that of religious bigotry. Despite Neufeld’s first public criticism of SOGI making no references to his religious beliefs, Hansman’s statements the very next day included: “*..trustees with faith-based views need to figure out how they’ll work in a secular public school system.*”<sup>47</sup>
65. Another statement incapable of a fair comment defence is the innuendo that Neufeld presents a safety risk to children akin to a drug dealer, paedophile or other such person. Hansman’s statements in the CBC, concurrent with his reference to “*hateful public comments about trans people*”, included:

“...[Neufeld] “**shouldn’t be anywhere near students**” ...<sup>48</sup>

66. In addition, the repeated references to hatred and hate speech also have no chance of meeting the fair comment test. The words included “**promoted hatred**” (Jan. 1/18); “**fight hatred**”.... “**exposed [trans people] to hatred**” (April 10/18); “**hate**

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<sup>46</sup> AR, Vol. II, p. 21 ANCC, para. 25, April 12/18, CityNews 1130.

<sup>47</sup> AR, Vol I, p. 85, ANCC, para. 16, Huffington Post.

<sup>48</sup> AR, Vol 1, p. 89, ANCC para. 26, April 13/18, CBC Radio.

**speech** (along with transphobia, racism and misogyny), “**tip toed quite far into hate speech**” (April 12/18); “**hateful**” public comments about trans people (April 13/18); “**continuing to spread hate about LGBTQ people**” and “**spreading hate**”(Sept. 16/18).

67. As would be understood by the public, such imputations infer criminal conduct, in addition to moral depravity. As the Court of Appeal pointed out:

[66] Accusations of hate speech may have both criminal and human rights connotations. Section 319(2) of the *Criminal Code* proscribes the wilful communication of any statement that “promotes hatred against any identifiable group.” Similarly, s. 7(1)(b) of the *BC Human Rights Code*, R.S.B.C 1996, c. 210 states that a “person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that is likely to expose a person or a group or class of persons to hatred or contempt.

[67] “Hatred” also has a very narrow definition. In *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, the Court clarified that hatred is limited to only the most intense and extreme emotions of detestation and vilification, saying:

[57] ... “hatred” or “hatred or contempt” is to be interpreted as being restricted to those extreme manifestations of the emotion described by the words “detestation” and “vilification”. This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects.

68. Regardless of how upset Hansman and others were to see criticism of SOGI, it is patently clear that Neufeld’s concerns were about the mental and physical well-being of students. It is also patently clear that Neufeld never expressed hatred towards any students in any manner and at any time.

69. While it is obvious that the fair comment defence is incapable of success with a number, if not all, of the statements at issue, there is no burden on Neufeld at present to prove that. As the Court of Appeal noted (at para. 24):

...What is involved is not a determinative adjudication of the existence of the defence. Introducing too high a standard of proof into

what is a preliminary assessment might suggest that the outcome is being adjudicated rather than the likelihood of an outcome: *Pointes SCC* at para. 37

### **Imputations of Fact Versus Comment**

70. Many of the subject statements herein could be understood as statements of fact, including: Oct. 24/17 he “*violated his obligations as a school board trustee*”: Jan. 17/18, he promotes “hatred.” April 10/18 he made “*transphobic comments*”; and Sept. 16/18 he is “*...continuing to spread hate about LGBTQ people.*”

71. As the Ontario Court of Appeal has stated:

....a reasonable trier could view the statements suggesting corruption and collusion in the bidding process as factual assertions or as statements of opinion. If the trier characterised them as the former, the fair comment defence would not succeed..<sup>49</sup>

In my view, a reasonable trier could conclude that the defence of fair comment would not succeed. It would be open to a trier to conclude that the statements made about the appellant – namely, that he supported terrorists – were uttered as statements of fact, not as statements of opinion.<sup>50</sup>

72. As the B.C. Court of Appeal has stated:

Given my view that “seasoned liar” is a statement of fact, I need not consider the defence of fair comment in connection therewith.<sup>51</sup>

73. The editorial in the *WIC Radio* case illustrates this distinction. As Justice Binnie noted (paras. 26 and 27), Rafe Mair's radio audience understood his loose, figurative or hyperbolic language in the context of political debate, commentary, media

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<sup>49</sup> *Bondfield Construction Company Limited v. The Globe and Mail Inc.*, 2019 ONCA 166 per Doherty JA at para.17.

<sup>50</sup> *Lascaris v. B'nai Brith Canada*, 2019 ONCA 163 per Nordheimer JA at para. 34.

<sup>51</sup> *Pan v. Gao*, 2020 BCCA 58 per Newbury JA at para. 104.

campaigns and public discourse. He was, as the court recognized, a well-known “radio personality with opinions on everything, not a reporter of the facts.”

74. The facts in *WIC Radio* are entirely distinct from 11 separate publications spread out over one year, carried by multiple media outlets, expressed by a person likely viewed as authoritative on education related matters, directed at an elected school board trustee and which conveyed a broader scope of different imputations as at issue herein.

**Where are the facts?**

75. Even if all of the imputations at issue would necessarily be understood as commentary and not statements of fact, the publications lack the requisite factual foundation explaining such comments.
76. As the B.C. Court of Appeal (quoting from Brown, *The Law of Defamation in Canada, 2d ed., vol. 2*):

[The facts] must be truly stated, or, at least, be substantially true. They must not be patently distorted or materially misstated, or so incomplete as to lead to a material alteration of the truth. A necessary foundation for the defence of fair comment is the truth of the facts commented upon. It is not sufficient to show some of the facts upon which the comment is made are true if some are also false, or if material facts are omitted which would fundamentally change the complexion of the facts which are stated.<sup>52</sup>

77. This Court confirmed this requirement in *WIC Radio*, stating:

If the factual foundation is unstated or unknown, or turns out to be false, the fair comment defence is not available.<sup>53</sup>

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<sup>52</sup> *Creative Salmon Co. Ltd. v. Staniford*, 2009 BCCA 61, per Tysoe JA at para. 58.

<sup>53</sup> *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, per Binnie J., at para. 31.

78. In *WIC Radio*, the radio editorial at issue referred to the facts upon which the opinion was based. This Court noted that “*the defence has established that every element of the factual foundation was either stated or publicly known*” (para. 34).<sup>54</sup>
79. It is, therefore, entirely irrelevant that Hansman says he believes Russia and Paraguay to be anti-gay countries or that the phrase “traditional family values” is anti-gay or other such things. The requisite factual foundation cannot be something created during litigation and well after the publications at issue.
80. Equally irrelevant to the defence of fair comment are what Hansman asserts to be statements of Neufeld expressed at other times. Even if he accurately sets out these other statements rather than a myriad of misleading half-truths which disregard context, such assertions do nothing to establish the requisite factual foundation to be found within the publications at issue.

### **Malice**

81. Even if all elements of fair comment had been established with each of the publications at issue, the defence is not available if the statements at issue were actuated by malice.
82. Inferences of malice may be drawn from the publications and surrounding circumstances and the concept of malice in defamation law is expansive. As this Court has confirmed:

[100].....Proof of malice may be intrinsic or extrinsic: that is, it may be drawn from the language of the assertion itself or from the circumstances surrounding the publication of the comment. It may involve inferences and evidentiary presumptions.

[101] I also see no reason to alter the nature of the malice inquiry. In *Cherneskey*, Dickson J. described malice as follows:

Malice is not limited to spite or ill will, although these are its most obvious instances. Malice includes any indirect motive or ulterior purpose, and will be

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<sup>54</sup> *Ibid.*

established if the plaintiff can prove that the defendant was not acting honestly when he published the comment. This will depend on all the circumstances of the case. Where the defendant is the writer or commentator himself, proof that the comment is not the honest expression of his real opinion would be evidence of malice. If the defendant is not the writer or commentator himself, but a subsequent publisher, obviously this is an inappropriate test of malice. Other criteria will be relevant to determine whether he published the comment from spite or ill will, or from any other indirect and dishonest motive. [p. 1099]<sup>55</sup>

83. The most obvious indications of malice are the words themselves. As one court noted:

It may be proven from the words of the publication or by evidence apart from the words. .... whether intemperate language was used or whether the words were couched in terms stronger than necessary ..... an inference of malice, particularly where the intemperance is the product of deliberation....<sup>56</sup>

84. Such harsh words as hatred, transphobia, religious bigotry, homophobia, racism are highly suggestive of animus, spite and ill will and, as noted by the B.C. Court of Appeal, the repetition of the same or comparable defamatory remarks is also evidence of malice.<sup>57</sup>
85. As to “indirect or ulterior purpose”: Hansman has substantial personal involvement in creating, implementing and promoting SOGI. He was upset to see this program criticized. His protracted misconduct herein was intended to oust Neufeld from the public arena and to deter others from speaking out. Such a political or ideological

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<sup>55</sup> *WIC Radio*, supra, per LeBel J., at paras. 100-101.

<sup>56</sup> *Salager v. Dye & Durham Corporation*, 2018 BCSC 438, per MacNaughton J. at para. 149.

<sup>57</sup> *Smith v. Cross*, 2009 BCCA 529 (see para. 171).

objective constitutes an “indirect or ulterior purpose” for his imputations herein and is further evidence of malice.

86. In addition, there is also Hansman’s refusal to apologize, expressed with a defiant proclamation that he “stands by his statements”. Aggravating matters was his continued libeling of Neufeld after litigation commenced. Such high-handed conduct reflects spite and ill will which constitutes malice in defamation law, all of which was disregarded in the Chambers Judgment.

### **Assessment of Harm and Causation**

87. As the Court of Appeal notes (para. 59), no fully developed damages brief is expected at this early stage. The burden is satisfied by sufficient evidence to draw a causal connection between the challenged expression and damages that are more than nominal.
88. In the present case, there is: i) presumption of damages in libel cases; ii) Neufeld’s direct evidence and iii) numerous other factors relevant to damages.

#### *i) Presumption of damages*

89. As confirmed in *Rutman v. Rabinowitz*, 2018 ONCA 80 at para. 62:

...it is trite law that general damages in libel cases are presumed from the very publication of the false statement. The injured plaintiff bears no obligation to prove actual loss or injury.<sup>58</sup>

90. As confirmed in *Montour v. Beacon Publishing Inc.*, 2019 ONCA 246, the presumption of damages applies on SLAPP applications:

[29] In *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, the court indicated at p. 1196: “general damages in defamation cases are presumed from the very publication of the false statement and are awarded at large.”

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<sup>58</sup> *Rutman v. Rabinowitz*, 2018 ONCA 80 at para. 62.

[31] A serious libel does not always manifest itself in financial losses. Recall that in *Hill v. Scientology* false allegations of criminal contempt against a lawyer resulted in general, aggravated and punitive damages totalling 1.6 million dollars, even without evidence linking any financial loss to the defamatory remarks. It is often difficult for a plaintiff to link reputational harm to financial loss, or to lead testimonial evidence of the actual impact of a particular defamation upon reputation.<sup>59</sup>

91. This Court has also confirmed that the presumption of damages remains intact on SLAPP applications, noting in *Bent v. Platnick* (para. 144) :

General damages are presumed in defamations actions, and this alone is sufficient to constitute harm<sup>60</sup>

*ii) Neufeld's direct evidence*

92. In addition to the legal presumption of damages, Neufeld provided direct sworn evidence of damages. He was not cross examined nor is there any contradictory evidence. The consequences he suffered are exactly as would be expected and as Hansman intended. There is nothing surprising or controversial about it.
93. It strains credulity to accept that the protracted vilification in the media would not impact Neufeld as he deposed in his sworn and unchallenged evidence.

*iii) Factors relevant to damages*

94. The Chambers Judgment (para. 155) noted a number of factors relevant to damages but which were then disregarded in that judgment. These factors include the following:

**The seriousness of the defamatory statement**

95. The most obvious evidence of damages is the actual publications. Common sense dictates that targeting a school board trustee with false imputations of hatred, bigotry

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<sup>59</sup> *Montour v. Beacon Publishing Inc.*, 2019 ONCA 246.

<sup>60</sup> *Bent v. Platnick*, 2020 SCC 23

and criminality is a most egregious libel. As stated in *Lascharis v. B'nai Brith Canada*, 2019 ONCA 163:

[41] That reality is sufficient to establish the seriousness of the harm to the appellant and to rebut the respondent's submission that the appellant failed to lead any evidence to show any damage to his reputation arising from the impugned statements. On that latter point, I would adopt the observation made by Bean J. in *Cooke v. MGN Limited*, [2014] EWHC 2831, [2015] 2 All ER 622 (QB), at para. 43:

Some statements are so obviously likely to cause serious harm to a person's reputation that this likelihood can be inferred. If a national newspaper with a large circulation wrongly accuses someone of being a terrorist or a paedophile, then in either case (putting to one side for the moment the question of a prompt and prominent apology) the likelihood of serious harm to reputation is plain, even if the individual's family and friends knew the allegation to be untrue.<sup>61</sup>

96. There appears to be no case law involving false imputations of criminal conduct to somebody in public life which does not attract substantial damages. The Chambers Judgment disregarded this common sense approach to the claim.

### **The identity of the parties**

97. As noted by the Ontario Court of Appeal:

The influence and reputation of the defendant is also relevant to the assessment of damages since the impact of the defamatory statement will depend on the status of the speaker.<sup>62</sup>

98. As president of a public sector union claiming 45,000 members and prominent gay rights activist, Hansman's high profile and resources equip him well to inflict

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<sup>61</sup> *Lascharis v. B'nai Brith Canada*, 2019 ONCA 163.

<sup>62</sup> *Lougheed Estate v. Wilson*, 2017 BCSC 1366, per Dardi J., at para. 622.

damage. His statements would likely be promoted widely given a well-established relationship by the media and be viewed as credible by much of the public.

99. On the other hand, Neufeld is a solitary school board trustee acting in the nature of a whistleblower or a person willing to “speak truth to power”. As an elected person dependent upon public perception of him, he was vulnerable to somebody in a powerful position like Hansman. As stated in *Lougheed Estate*:

“Numerous authorities have recognized the particular vulnerability of persons holding elected office to charges against their reputation and character given that their positions depend on the confidence of those who voted for them.”<sup>63</sup>

### **The breadth of the distribution**

100. In addition to local and national print and broadcast media, the subject publications were disseminated to the world on the internet. As confirmed by the Ontario Court of Appeal:

[34] ..... Internet defamation is distinguished from its less pervasive cousins, in terms of its potential to damage the reputation of individuals and corporations, by the features described above, especially its interactive nature, its potential for being taken at face value, and its absolute and immediate worldwide ubiquity and accessibility. The mode and extent of publication is therefore a particularly significant consideration in assessing damages in Internet defamation cases.<sup>64</sup>

### **Republication of the libel**

101. The imputations at issue herein were republished in a number of different ways over a one year period, widely disseminated through a variety of different media outlets.

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<sup>63</sup> *Lougheed Estate*, supra, per Dardi J., at para. 621.

<sup>64</sup> *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ONCA), per Blair JA at para. 34.

102. There is also the use of the Chilliwack Progress newspaper the very day before the trustee election. By directing the public to a vicious smear in a newsletter called The Press Progress, Hansman republished a number of the imputations at issue herein. As this Court has stated:

...one should not be able to freely publish a scurrilous libel simply by purporting to attribute the allegation to someone else.<sup>65</sup>

**The absence or refusal of any retraction or apology**

103. A demand for apology was issued pre-litigation and, not only was it refused, Hansman continued with his libels.<sup>66</sup>

**Prominence of the publications**

104. The subject publications had varying degrees of prominence but none were obscure or subtle. They tended to be big and bold, some with pictures of Neufeld and with significant headlines and bylines.

**Causation**

105. As the Court of Appeal indicated and as confirmed in *Bondfield Construction Company Limited v. The Globe and Mail Inc.*, 2019 ONCA 166, (para. 25), a SLAPP application is “ ..not the place to resolve the causal connection issue as it related to the alleged damages.”<sup>67</sup>
106. There is no evidence that anybody else defamed Neufeld to the degree and over such a lengthy period as Hansman did. There is also no evidence that anybody else had the capabilities to organise protests republishing a number of the imputations at issue

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<sup>65</sup> *Grant v. Torstar Corp.*, 2009 SCC 61, per McLachlin C.J., at para. 119.

<sup>66</sup> AR, Vol. II, apology demand, p.139 and refusal, p. 146.

<sup>67</sup> *Bondfield Construction Company Limited v. The Globe and Mail Inc.*, 2019 ONCA 166, (para. 25).

by signs such as “**Hate Cannot Educate**” and “**Transphobic school trustee must go**”.

107. Even if Hansman was just one participant in an angry mob as opposed to a high profile “social justice” activist using his powerful position with the BCTF to lead the charge, there is no refuge for him in the fact that others also defamed Neufeld. As the Court of Appeal noted (para. 59):

[59] .....Although it may well be found that Mr. Hansman was not the sole cause of any harm to Mr. Neufeld’s reputation, it must be remembered that “no definitive determination of harm or causation is required” at this stage of the inquiry: *Pointes SCC* at para. 71. Nor is causation an “all-or-nothing proposition”: *Pointes SCC* at para. 72. As Mr. Neufeld points out, in cases of concurrent defamation committed by multiple sources, it would be virtually impossible for plaintiffs to prove an exclusive causal link to damages from the words of just one of the defamers. In *Gatley on Libel and Slander* at ch. 8.2, the authors describe the principle this way:

If the claimant elects to sue one of them separately, it is no defence that the others are jointly liable with him, nor will such fact mitigate the damages recoverable ...

108. The B.C. Court of Appeal made that same point in an earlier case:

....As between the plaintiff and the defendant it is immaterial that there are others whose acts also have been a cause of injury and it does not matter whether those others have or have not a good defence.<sup>68</sup>

### **The WIC Radio case**

109. As the Court of Appeal points out and as is clear from a review of the judgment, the facts in *WIC Radio* are easily distinguishable from those herein.

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<sup>68</sup> *Bradley v. Groves*, 2010 BCCA 36, per curiam, at para. 75.

110. Aside from equating such different cases, the Chambers Judgment reflects an impermissible summary trial approach to what is supposed to be a “screening device” intended to weed out abusive claims.
111. The *WIC Radio* case required a 15 day trial during which the evidence was tested and the facts fully established. Even with that advantage, the question of whether the fair comment defence prevailed was a difficult one, given that it was accepted at trial, reversed on appeal and then reversed again by this Court.
112. If comparing *WIC Radio* to this case signifies anything, it is to confirm that, absent clearly unmeritorious claims, trials are required to properly adjudicate a fair comment defence.

**B. Was the Court of Appeal correct that the chilling effect on both parties is within factors to be weighed in determining the public interest as per PPPA section 4(2)(b).**

113. Two main points: What is the expression at issue and, secondly, what factors are considered in determining the public interest.

**The Expression at issue**

114. Hansman urges this Court to make the same mistake the Chambers Judge did by conflating debate about SOGI with the statements at issue. However, as made clear in the pleadings and as the Court of Appeal points out, Hansman is not being sued for his activism, his “social justice” agenda, his support for SOGI, his quest for safe schools or any other such matter.
115. There is no public interest in protecting libel of the nature in this case and there is every reason for the courts to condemn it. Freedom of debate is not freedom to libel. As this Court noted in the context of the fair comment defence:

Opinions published with the primary intention of injuring another person (for example), rather than furthering public debate, are sufficiently far removed from the type of speech the defence was

intended to protect that they may justifiably be excluded from the scope of its protection.<sup>69</sup>

116. As other courts have noted in regard to SLAPP applications:

It should be remembered that not all expressions on matters of public interest serve the values underlying freedom of expression. In assessing the public interest favouring the defendants' freedom of expression, a judge must assess the public interest in protecting the actual expression that is the subject of the lawsuit.<sup>70</sup>

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The anti-SLAPP provisions.... do not create a “safe space” for defamation because the subject matter is one of public interest and hateful or malicious attempts to inflict harm under the guise of free debate of matters of public interest are not protected from suit by the legislation.<sup>71</sup>

### **The Public Interest**

117. The wording of section 4(2) of the PPPA is not ambiguous. Common sense dictates that “public interest” engages the interests of all participants in the public arena, not just defendants.

118. If the legislature intended to confine the weighing exercise to only the interests of defendants, section 4(2) could have easily said that. As the Court of Appeal noted (para. 63):

Although the statutory language refers to “the harm likely to have been or to be suffered by the plaintiff” as a result of the defendant’s expression, it requires the judge to assess the public interest in continuing the proceeding. It is thus not only the harm to the plaintiff that is being weighed, but the public interest in vindicating a

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<sup>69</sup> *WIC Radio, supra*, per LeBel J. at para. 106.

<sup>70</sup> *Lyncaster v. Metro Vancouver Kink Society, 2019 BCSC 2207 per Mayer J. at para. 62.*

<sup>71</sup> *DEI Films Ltd. v. Tiwari, 2018 ONSC 4423, Perrel J at para. 41.*

potentially meritorious claim: *Pointes SCC* at para. 63. That public interest is grounded in the important societal value of protecting reputation: *Bent SCC* at para. 146. Those who engage in public discourse should not do so only at the risk of sacrificing their reputation.

119. At paragraph 64, the Court of Appeal refers to this Court’s judgment in *Pointes* which confirms that a factor to be considered in the weighing exercise is “the potential chilling effect on future expression either by a party or by others, ...”

120. At paragraph 7 and 64, the Court of Appeal noting this Court in *Pointes* that the weighing exercise enables courts to scrutinize “what is really going on”.

Having regard to “what is really going on” herein makes the weighing exercise very easy. There is no public interest in protecting libels expressed for the sole purpose of punishing critics and stifling debate. There is, however, considerable public interest in safeguarding the public arena and considerable public interest in ensuring that meritorious claims are not *denied* a day in court.

121. The quasi-constitutional function of defamation law in the context of protecting the public interest has long been recognised. As this Court has noted [my emphasis]:

**Democracy has always recognized** and cherished the fundamental importance of an individual. That importance must, in turn, be based upon the good repute of a person. It is that good repute which enhances an individual's sense of worth and value. False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by libel can seldom regain its former lustre. **A democratic society, therefore, has an interest** in ensuring that its members can enjoy and protect their good reputation so long as it is merited.<sup>72</sup>

122. A democratic society’s interest in the role played by defamation law, as noted in *Hill*, underscores the importance of letting defamation law do its job. School board trustees, and indeed, all elected officials, are better able to participate in the public arena when protected by the law of defamation.

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<sup>72</sup> *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130, per Cory J. at para. 108.

123. Finally, there is the need to preserve public confidence in the legal system. The power to summarily dismiss meritorious claims involving a political and/or ideological backdrop must be managed with great caution. The integrity of the courts is at stake when such factors are in play and when somebody like Neufeld is denied access to justice. The public must be confident that, despite ideologically driven narratives of governments, public sector unions and certain special interest groups, the rule of law still applies.
124. An outcome herein which denies Neufeld his day in court will signify to the communities which elect school board trustees that their voices do not matter. To undermine democracy in this manner must also be a factor in any honest assessment of the public interest.
125. Given a need to preserve the integrity of the courts and the vital role of defamation law in maintaining an effective public arena and given the actual expressions at issue in this libel claim, the weighing exercise under PPPA section 4(2) herein is any easy task.

#### **PART IV – SUBMISSION CONCERNING COSTS**

126. The Respondent submits that the unique facts and public interest nature of this case warrant full indemnity for his actual costs in this matter at all levels of court.
127. Section 7 of the PPPA presumes full indemnity costs on successful section 4 applications. This statutory presumption seeks to ensure that those who find themselves in litigation to defend freedom of expression on matters of public interest ought not face a financial burden for doing that.
128. This policy rationale is engaged herein but, in a twist from the usual procedural landscape, it is the respondent on this section 4 application (Neufeld) who is the party seeking to defend freedom of expression.

129. Such disposition on costs would also signify the possibility of cost implications to those who, in cases bearing no indicia of SLAPP, may use this process to delay trials and exhaust the resources of adversaries.
130. Should Neufeld be denied full indemnity costs, he seeks an order for costs herein and throughout on such basis as this Court deems to be warranted.

**PART V – ORDERS SOUGHT**

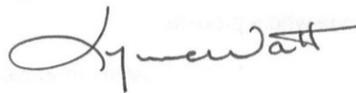
131. The Respondent submits that the appeal ought to be dismissed, with costs on a full indemnity scale.

**PART VI – SUBMISSIONS ON CONFIDENTIAL INFORMATION**

132. There are no sealing or confidentiality orders, publication bans, classification of information in the file as confidential under legislation or restriction on public access to information in the file that could have impact on the Court’s reasons, if any, in the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at West Vancouver, British Columbia this 8<sup>th</sup> day of June, 2022.



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Paul E. Jaffe  
Counsel for the Respondent

**PART VII – TABLE OF AUTHORITIES & LEGISLATION**

<b>Case Law</b>	<b>Paragraph References</b>
<i>1704604 Ontario Ltd. v. Pointes Protection Association</i> , <a href="#">2020 SCC 22</a>	118, 119
<i>Barrick Gold Corp. v. Lopehandia</i> , <a href="#">2004 CanLII 12938</a> (ONCA)	100
<i>Bent v. Platnick</i> , <a href="#">2020 SCC 23</a>	91
<i>Bondfield Construction Co. Ltd v. The Globe and Mail Inc.</i> , <a href="#">2019 ONCA 166</a>	71, 105
<i>Bradley v. Groves</i> , <a href="#">2010 BCCA 36</a>	108
<i>Creative Salmon Co. Ltd. v. Staniford</i> , <a href="#">2009 BCCA 61</a>	76
<i>DEI Films Ltd. v. Tiwari</i> , <a href="#">2018 ONSC 4423</a>	116
<i>Grant v. Torstar Corp.</i> , <a href="#">2009 SCC 61</a>	102
<i>Hill v. Church of Scientology of Toronto</i> , <a href="#">[1995] 2 SCR 1130</a>	90, 121
<i>Lascaris v. B'nai Brith Canada</i> , <a href="#">2019 ONCA 163</a>	95
<i>Lougheed Estate v. Wilson</i> , <a href="#">2017 BCSC 1366</a>	97, 99
<i>Lyncaster v. Metro Vancouver Kink Society</i> , <a href="#">2019 BCSC 2207</a>	116
<i>Montour v. Beacon Publishing Inc.</i> , <a href="#">2019 ONCA 246</a>	90
<i>Pan v. Gao</i> , <a href="#">2020 BCCA 58</a>	72

**PART VII – TABLE OF AUTHORITIES & LEGISLATION**

<b>Case Law</b>	<b>Paragraph References</b>
<i>Rutman v. Rabinowitz</i> , <a href="#">2018 ONCA 80</a>	89
<i>Salager v. Dye &amp; Durham Corporation</i> , <a href="#">2018 BCSC 438</a>	83
<i>Smith v. Cross</i> , <a href="#">2009 BCCA 529</a>	84
<i>WIC Radio Ltd. v. Simpson</i> , <a href="#">2008 SCC 40</a>	73, 74, 77, 78, 82, 109, 111, 112, 115
<b>Legislation:</b>	
<i>Criminal Code</i> (R.S.C., 1985, c. C-46), s. <a href="#">318(4)</a> and s. <a href="#">319(2)</a> <i>Code criminel</i> (L.R.C. (1985), ch. C-46), s. <a href="#">318(4)</a> and s. <a href="#">319(2)</a>	40