

IN THE MATTER of the *HUMAN RIGHTS CODE*,
RSBC 1996, c 210 (as amended)

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

BETWEEN:

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 411

COMPLAINANT

AND:

**BARRY NEUFELD and
THE BOARD OF EDUCATION, SCHOOL DISTRICT #33 (CHILLIWACK)**

RESPONDENTS

Form 1.3 – COMPLAINT FOR GROUP OR CLASS

I. INTRODUCTION

Background and Overview

1. Trustee Barry Neufeld of the Chilliwack Board of Education, School District #33 (the “Board”) has made and published homophobic and transphobic statements pertaining to the work environments and working conditions of members of the Complainant, CUPE Local 411 (the “Union”), in violation of section 13(1)(b) of the *Human Rights Code*, RSBC 1996 c 210 (the “Code”).

2. By failing to take adequate measures to protect its employees from this discrimination, the Board has failed to provide a work environment free of discrimination contrary to section 13(1)(b) of the *Code*.

The Parties

3. The Board is a representative body elected to provide public education and oversee the operation of schools in the Chilliwack School District (the District). The District comprises elementary, middle and high schools in Chilliwack, Sardis, Veder and the surrounding areas of Yarrow, Cultus Lake, Rosedale and Greendale in BC.
4. The Union is a trade union certified under the *Labour Relations Code*, RSBC 1996 c 244, to represent employees of the Board other than teachers, administrators, and exempt employees. Its membership is described as support staff and includes clerical, custodial, maintenance, and transportation staff and assistants.

II. FACTS

5. On or about October 23, 2017 Neufeld posted a discriminatory statement on his Facebook account with respect to what he called “the Sexual Orientation and Gender Identity (SOGI) program”.
6. In fact no such program exists; rather, the District like others across the province has adopted policies to promote inclusion of LGBTQ students. The District, the Ministry of Education, and other stakeholders use the acronym “SOGI” to stand for “sexual orientation and gender identity”, not to refer to any particular program. After the *Code* was amended in July 2016 to include gender identity and expression as a prohibited ground of discrimination, the Ministry of Education required all BC school districts to adopt anti-bullying policies that explicitly referred to sexual orientation and gender identity. Chilliwack has adopted such a policy. That is the extent to which a formal “SOGI” policy, program, or initiative exists in Chilliwack at the District level.

7. There exists a set of online resources that teachers can access and use in implementing SOGI-inclusive education in their classrooms, in line with their employers' anti-bullying policies, called "SOGI 123". This is not a program or a curriculum, nor is it in anyway mandatory. It is one of many hundreds or thousands of websites that house teaching resources that BC teachers can draw from to use in their own classrooms.
8. Regardless of the fact that there has been no actual change to curriculum or mandated programs in the District, Neufeld published comments decrying "SOGI" as "a weapon of propaganda" and accusing the Ministry of Education of "forcing this biologically absurd theory on children in our schools." He made a number of other wholly fabricated statements about the "SOGI" program which he imagines exists but in fact does not.
9. He stated that allowing transgender children to express their gender identity was "child abuse". He expressed his preference for the approach of countries like "Russia, or Paraguay" where LGBTQ people face state-endorsed discrimination.
10. Neufeld has since deleted his post.
11. Neufeld purported to issue a public apology on October 25, 2017.
12. Nonetheless, on November 21, 2017, he was the keynote speaker at a public meeting in Chilliwack organized by Culture Guard, an organization that describes itself as working "to ensure that our nation's statutes and concepts of "community values" used by agencies will reflect and protect the natural family, parental rights, the sanctity of life, liberty, respect, judicial accountability etc." (www.cultureguard.com)
13. At that meeting he repeated many of his criticisms of SOGI set out above. He described transgender people as suffering "the sexual addiction of gender confusion". He accused proponents of inclusive education of "using innocent school children to launch a cultural revolution". He described transgender identity as a symptom of

mental illness and “an ideology not based in science” and mocked transgender people as equivalent to “a 50-year-old man who wants to come out as a 6-year-old.”

14. The tenor and content of his speech communicated that being transgender is a disability and is abnormal, dysfunctional and harmful to society.
15. Neufeld’s statements perpetuate negative stereotypes about transgender people.
16. Local media were present at the meeting and Neufeld’s speech was video-recorded and published online (<https://www.theprogress.com/news/chilliwack-school-trustee-says-he-will-run-on-gender-positive-platform-next-year/>).
17. On December 17, 2017, Neufeld published another Facebook post that made discriminatory statements about transgender, and now also gay and lesbian, people. Neufeld described himself as a prophet, likening himself to early Christian saints and martyrs. He encouraged readers to take action against SOGI-inclusive education with the warning that “the government will apprehend your children and put them in homes where they will be encouraged to explore homosexuality and gender fluidity.” He drew a parallel between SOGI, that is, anti-bullying policies that explicitly reference sexual orientation and gender identity, and the systematic cultural genocide inflicted on Indigenous communities through residential schools. Neufeld deleted the post but its content is reproduced online at <https://www.theprogress.com/news/neufeld-claims-government-will-start-taking-children-and-putting-them-in-gender-fluid-homes/>

Failure of the Board to provide a workplace free of harassment and discrimination

18. On October 25, 2017, the Board issued a media release stating that Neufeld’s comments were his own personal opinions and did not reflect the Board’s views. The Board did not censure Neufeld.
19. The Board took no further steps to censure Neufeld or protect its employees from his discriminatory statements.

20. In in-person conversations, Board trustees told the Union that they support Neufeld's freedom to make these discriminatory statements and refused to censure him. Only one Trustee, Dan Coulter, has demanded that Neufeld apologize and urged him to resign. The Board as an entity has not done so.
21. On December 20, 2017, Board Chair Paul McManus wrote to the Chilliwack local newspaper *The Progress* criticizing Neufeld's actions. McManus stated that Neufeld should refrain from commenting publicly as an individual trustee and instead should wait for the Board's scheduled meeting to discuss SOGI issues. McManus acknowledged that students and staff were now feeling unsafe in the school environment as a result of Neufeld's comments. The Board took no steps to censure Neufeld.

III. SUBMISSION

22. It is trite that public derogatory comments that contain slurs or perpetuate negative stereotypes of persons who possess certain characteristics amount to discrimination: *Pardy v. Earle*, 2011 BCHRT 101. In that case derogatory comments by a comedian were found to be discrimination and the comedian's employer was also held liable.
23. In *Algor v. Alcan and others (No. 2)*, 2006 BCHRT 200, the Tribunal affirmed the Supreme Court of Canada decision in *Robichaud v. Canada (Treasury Board)*, [1987] 2 SCR 84, that an employer is responsible for ensuring a discrimination- and harassment-free work environment.
24. Directors or officers of an organization are subject to section 13 of the *Code*: *Ferguson v. School District No. 60 (Peace River North) and Inglehart (No. 2)*, 2005 BCHRT 533, paragraph 71.
25. As remedial legislation, the *Code* is to be given a liberal construction. In *McCormick v. Fasken Martineau DuMoulin LLP*, 2015 SCC 39 at para. 20-28, the Supreme Court of

Canada held that the term 'employment' should be given an expansive definition for the purposes of the *Code*.

26. In *Robichaud*, the Supreme Court of Canada found an employee of the federal government to have sexually harassed the complainant. The Court found the government liable for the employee's actions because an employer is responsible for providing a remedy to the undesirable effects of discrimination, and for providing a healthy work environment.
27. More recently the Supreme Court of Canada in *British Columbia Human Rights Tribunal v. Schrenck*, 2017 SCC 62, has confirmed that it is not necessary to find that the person who perpetrated the discrimination was in an employment relationship with the complainant. The key is that an employee is protected from discrimination when the discrimination has a "sufficient nexus with the employment context."
28. In *Schrenk* the court said that a contextual analysis has to be conducted to determine the existence of the nexus. In that case the court set out a non-exhaustive list of three factors whose relative importance was dependent on the circumstances:
 - (1) whether the respondent was integral to the complainant's workplace;
 - (2) whether the impugned conduct occurred in the complainant's workplace; and
 - (3) whether the complainant's work performance or work environment was negatively affected.
29. In this case:
 - a. Neufeld is a trustee of the Board that operates and is responsible for the workplace of CUPE members; he stands in a position of authority over members of CUPE in the context of their employment.
 - b. Neufeld was commenting about the education provided in schools where CUPE members work. His comments were not just about discrimination in society in general; they were about what should and should not be allowed

in CUPE members' workplaces. He spoke in favour of discrimination being perpetuated at CUPE members' workplaces.

- c. The work environment of CUPE members was affected because members of CUPE who are LGBTQ are part of the group described as being abnormal, dysfunctional, a threat to society, and that should be subjected to state-endorsed discrimination as they are in Russia and Ecuador. This creates a work environment where CUPE members who are LGTBQ are sent the message that there is something wrong with them and they are inferior to others.
30. The Board's response to Neufeld's publication was to issue a News Release on October 25, 2017 in which it stated that Neufeld's comments were his own and reiterated its own belief that schools need to be safe and welcoming places for all students regardless of sexual orientation, gender identity race religion or background. The Board has taken no steps to censure Neufeld.
 31. The Chair of the Board has acknowledged that Neufeld's comments have created an unsafe working environment for CUPE members and other Board employees.
 32. As set out in *Robichaud*, at para 19, an employer who responds quickly and effectively to a complaint of discrimination and prevents recurrence of the discrimination may be exposed to lesser remedial consequences than an employer who fails to take such action; however, even an employer who responds appropriately is not free of liability altogether.
 33. In any event, in this case, the Board's response was entirely ineffective. In fact, it provided an apparent cover for Neufeld to repeat the derogatory comments at the November public meeting where he opened his speech by stating that the opinions he expressed were his own. Neufeld has continued to make discriminatory statements that exacerbate the unsafe work environment CUPE members are subjected to.

34. In addition to obligations under the law, Neufeld and other members of the Board are governed by the Board's "Policy 402 – Harassment" which states that harassment is recognized as discrimination and against the law "and will not be tolerated". Employees of the Board can be disciplined for violating this policy. Trustees can be subject to motions of censure. For example, when two trustees in Vancouver violated a similar policy in a much more restrained manner, the Vancouver School Board passed a motion to censure the two.

35. The Board has failed to censure Neufeld.

III. REMEDY SOUGHT

36. The Complainant seeks a declaratory order that the Respondents have breached the *Code*.


37. The Complainant seeks an order that the Respondent Board require trustees and senior management to complete training on LGBTQ equality rights, and on protecting LGBTQ students in schools.

38. Further the Complainant seeks an order directing the Board to enforce Board Policy 402 by adopting a motion of censure.

39. The Complainant seeks an order for compensation for injury to dignity, feelings, and self-respect in the amount of \$50,000 to be paid on behalf of the affected employees to a non-profit organization that advocates for LGBTQ youth.

Respectfully submitted on behalf of CUPE Local 411,

ALLEVATO QUAIL & WORTH



per: Susanna Quail, Barrister & Solicitor