

Expelling Transphobia

A handbook of strategies to address transphobic attacks in the B.C. school system



Lawyers against Transphobia

About Lawyers Against Transphobia

This handbook was written collaboratively by a committee of Lawyers Against Transphobia (LAT) including James Chamberlain, barbara findlay, Jay Landon, Susanna Quail and Kylie Walman.

LAT is an ad hoc group of lawyers, teachers, parents, and other justice workers who are committed to addressing transphobia by speaking up in the profession, in the courts, in the school system, and in the media; responding to incidents of transphobia as they occur.

LAT was born in British Columbia (B.C.) but is growing nationally.

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About the Handbook

This handbook was written to assist the hardworking school trustees in B.C. who are being targeted with transphobic and homophobic abuse.

The handbook is being released in chapters. The summer 2024 release includes Chapters 1, 2 and 3 below:

- Chapter 1: A Five Alarm Fire
- Chapter 2: Legal Ways to Deal with Transphobia
- Chapter 3: Defending School Boards and Meetings from Transphobic Attacks
- Chapter 4: Rights and Responsibilities of Students in Response to Transphobia
- Chapter 5: Rights and Responsibilities of Educators in Response to Transphobia
- Chapter 6: Rights and Responsibilities of Superintendents and School Administrators in Response to Transphobia
- Chapter 7: Rights and Responsibilities of Parents in Response to Transphobia

This handbook was edited and designed by [Kitty Rodé](#).

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Chapter 1: A Five Alarm Fire

Saskatchewan has legislated the rights of **transgender** kids out of existence in schools. Alberta may well follow suit in the coming months. And while school districts, educators, students and families are fighting back as hard as they can, New Brunswick's Policy 713 is attempting to harm trans youth in similar ways.

The Canadian Security Intelligence Service (CSIS) has warned that the **anti-gender movement** poses a threat of extreme violence for **2SLGBTQIA+** communities.¹

Canada's right-wing has chosen transgender youth in schools as a site for their efforts to galvanize voters to support an agenda that will ultimately result in the loss of equality and human rights for us all.

*This latest wave of **transphobia** originated in the U.S.*

At the time of this writing there are currently 552 transphobic bills in 42 states. Of those, 35 have passed, 324 are active, and 193 have failed. These laws cover everything from prohibitions against a parent supporting their trans child to transition on pain of having their child apprehended (Florida), against doctors providing trans-affirming care (Texas), against anyone using a washroom that doesn't 'match' their sex assigned at birth (multiple states), to prohibitions against trans athletes playing on teams that match their gender identity (one third of states have already passed laws banning transgender students from participating in sports consistent with their gender identity).

Less than five years ago the right-wing in B.C. was targeting trans youth who were seeking gender-affirming care and litigating to prevent them from accessing that care. They brought court cases against doctors and against gender-affirming parents. They harassed and reported care providers to professional associations.

So far, their efforts have failed.

A word about words

In this handbook we use **trans** or **transgender** to refer to anyone whose gender identity does not correspond with what is socially expected based on their sex assigned at birth. Trans can be used as an umbrella term referring to a range of gender identities and experiences that transcend beyond, exist between, or cross over the gender spectrum. It can include, but is not limited to, people who identify as transgender, transsexual, Two-Spirit, non-binary or gender non-conforming (gender variant or genderqueer).

References: [EGALE LGBTQI2S Glossary](#) and [The 519 Glossary](#)

2SLGBTQIA+ is an acronym meaning Two-Spirit, lesbian, gay, bisexual, trans, queer, intersex, asexual and more.

Transphobia describes attitudes and actions which do not accept the existence or the human rights of trans people.

Homophobia describes attitudes and actions which do not accept the sexual orientation of gay, lesbian, bisexual, or Two-Spirit people.

SOGI stands for 'sexual orientation and gender identity'. In B.C. the provincial resource for teachers is called [SOGI 123](#).

¹ [CSIS warns that the 'anti-gender movement' poses a threat of 'extreme violence' | CBC News](#)

B.C. courts have established unambiguously that if a trans youth understands the nature and consequences of gender-affirming care, and their health care provider believes that care to be in their best interest, no one can prevent that care from happening. Courts have also established that professionals providing care are not guilty of ‘unprofessional conduct’ as charged by right wing actors at the time.²

Trans kids are still the focus of these groups - but now they are being targeted in schools.

Trans kids are the perfect political target

Trans youth are among the tiniest, least powerful and most isolated constituents. Focusing on trans kids in school allows transphobes to conceal their harmful views under the guise of protecting children and supporting ‘parental rights’.

For example, these groups insist that parental rights include the right to be informed of a child’s gender identity disclosures at school, regardless of whether the child consents to this disclosure.

As a legal strategy, it has no basis: there is no such thing as constitutionally protected parental rights.

But it is a brilliant political strategy.

Who can oppose parental rights? Parents are voters, and many parents cannot accept the idea that *their* child might be trans, that people at school might know about it, and that they have been left in the dark. Never mind the impossibility of completely concealing information from parents if it’s known by other students (and therefore other parents) in the community. Yet, misinformation abounds.

Schools as a site for transphobic violence

School trustees who support trans kids are routinely harassed and targeted to prevent them from running for elected office again; allowing transphobes to run in their place.³ Transphobic parents decry the inclusion of resources that portray a diversity of gender identities and sexual orientations and demand the removal of books from school libraries. We also see that inclusive teachers, especially transgender teachers, are viciously targeted on social media.

Recent transphobic actions against schools and school boards have included:

- Picketing schools

² *A.B. v C.D. 2020 BCCA 11*, followed in *A.M. v Dr. F., 2021 BCSC 32*. In *complainant v College of Physicians and Surgeons of B.C. (No 1) 2023 BCHPRB 88*, the Health Professions Review Board of B.C. dismissed an allegation that one of the doctors who had provided treatment to the youth in *A.B. v C.D.* committed professional misconduct by prescribing testosterone to A.B.

³ [Advocacy groups raising concerns about ‘anti-trans’ school board trustee candidates | The Free Press](#)

- Disrupting school board meetings
- Harassing and **doxing** trans and queer teachers
- Harassing school trustees
- Protesting outside of school board offices
- Coordinating efforts to elect trustees with a transphobic agenda
- Alleging that teachers and trustees are indoctrinating children and allowing pornography in schools by including [SOGI resource materials](#) to supplement the existing provincial curriculum

Doxing is the act of searching for and publishing private or identifying information about a particular person, usually with malicious intent.

A question of life or death

Transgender children and youth are an extremely vulnerable population. They find themselves to be a gender for which there may be no model for their experience. Their gender identity is frequently not affirmed by the people around them, potentially including their family. In severe cases, they face transphobic violence from these same people including physical and emotional abuse, barriers to supports including health care, and homelessness.

Many trans youth are forced to face the impossible dilemma of having to guess whether their parent will be supportive or rejecting, if they decide to tell their parent about their gender.

The risk of disclosure is acute and contributes to increased mental and emotional distress and even suicide in trans youth populations.

A study in the Canadian Medical Association Journal found that **transgender adolescents had a risk of suicidal ideation five times the rest of their age cohort, and a risk of suicide attempts 7.6 times their age cohort.**⁴ The risk of suicide increases if they do not have a supportive parent or teacher. Conversely, their risk of suicide decreases if they are supported in their gender identity. Trans children’s risk of suicide is further exacerbated if they experience discrimination in the form of physical or verbal harassment, physical or sexual assault, or exclusion because of their trans identity.⁵

Some trans students may face a difficult journey of transition. For many of these students, schools may be the only safe place in their lives. It is the legal duty of schools and school boards to keep transgender children, teachers, staff and administrators safe from discrimination or bullying.⁶

⁴ [Suicidality among sexual minority and transgender adolescents: a nationally representative population-based study of youth in Canada | Canadian Medical Association Journal](#)

⁵ [Transgender People and Suicide | Centre for Suicide Prevention](#)

⁶ In *School district No 44 (North Vancouver) v Jubran* 2005 BCCA 201, the highest court in BC confirmed that school boards have a legal duty to provide a non-discriminatory learning environment. This includes a duty to address discriminatory conduct toward students by other students.

Saskatchewan’s cynical gamble

The Saskatchewan Party has passed legislation⁷ which undermines the rights of transgender students *and* invokes the **notwithstanding clause**: a provision that **overrides students’ constitutional equality protections** under the Canadian Charter of Rights and Freedoms (often referred to as the “Charter of Rights” or the “Charter”).

Premier Scott Moe’s law requires that teachers and school staff must ‘**out**’ any trans⁸ student to their parents, regardless of whether the student consents to having their identity disclosed.

Moe didn’t start this course of action with a law. He started with a policy in the same terms. But Saskatchewan courts held that the policy was a violation of students’ equality rights under the Charter and held that it could not be used.⁹

Outing is the act of disclosing a person’s sexual orientation or gender identity without their consent. It is derived from the term “coming out”.

In response, Moe took a draconian next step that should alarm every Canadian.

He used the notwithstanding clause of the Charter of Rights.

The Charter of Rights was enacted in 1982 and has been part of the Canadian constitution ever since. The Charter is powerful because it enables people to challenge laws made by a province, territory, or federal government on the grounds that the law breaches a Charter protection. If a court agrees that a law offends the Charter, it can suspend the operation of the law.

The notwithstanding clause in the Charter enables governments to *overrule* some of the Charter protections if they put an explicit clause in the legislation saying it operates ‘notwithstanding the Charter of Rights’. Such a law automatically expires after five years.

Those who framed the Charter assumed that the use of the notwithstanding clause would be so politically toxic that governments simply would not use it. However, we now see the Saskatchewan government gambling that it will gain more conservative voters by targeting trans children than it will lose by using the notwithstanding clause. New Brunswick has taken the step of imposing a similar policy. As of this writing, that policy is being challenged in the courts.¹⁰

⁷ [Education \(Parents’ Bill of Rights\) Amendment Act SS 2023, c 46 | CanLII](#)

⁸ In this handbook we use the shorthand ‘trans’ to include people who identify as transgender, non-binary, Two-Spirit, or gender non-conforming.

⁹ [UR Pride Centre for Sexuality and Gender Diversity v Saskatchewan \(Education\) 2023 SKKB 204 | CanLII](#)

¹⁰ What is the difference between a policy and a law? The difference is in how it can be changed. A policy can be changed by the next policymaker. But a law can only be changed by a legislature. Regulations are rules passed by Cabinet pursuant to legislation; and regulations can only be changed by Cabinet or by the legislature.

Alberta has announced an intention to introduce a policy that will go further than either Saskatchewan or New Brunswick. It not only addresses trans kids in schools but will also intervene to block access to medical care for trans kids. It will restrict access to puberty blockers, hormone therapies, and gender-affirming surgeries for trans youth, all of which can be lifesaving for trans kids.¹¹

Supporting trans students in British Columbia

The B.C. Ministry of Education has supported the rights of trans students in three important ways.

Since 2016 the Ministry has required school boards to reference sexual orientation and gender identity (SOGI) in district and school codes of conduct.¹² The ten key components for school boards to consider in creating policy or procedures include:

- **Common language:** an understanding of how to refer to gender identity, gender expression, and transgender people
- **Safety/anti-harassment:** proactive and reactive measures that include sexual orientation and gender identity
- **Self-identification:** students have the right to self-identify, including by the name and pronouns corresponding to their gender identity
- **Confidentiality:** students have the right to confidentiality about their sex, gender and name¹³
- **Dress guidelines:** students may express their gender identity or expression through what they wear to school. Dress codes should be as all-inclusive as possible.
- **Gender integrated and inclusive activities:** integrated and inclusive activities enable students to join teams and groups that they feel correspond with their gender identities
- **Educator training:** all staff will be provided with knowledge and tools to develop an understanding of SOGI and how it impacts students
- **Inclusive learning:** materials and activities will include positive images and accurate information about sexual and/or gender diversity
- **Facilities:** individuals may choose to use washrooms and change rooms matching their gender identity, including non-gendered single-stall washrooms and change rooms

¹¹ [How Alberta's proposed trans youth rules fit into a polarized international landscape | CBC News](#)

¹² [Understanding the Directive from the Ministry of Education | SOGI 123](#)

¹³ Students in B.C. are protected by the *Freedom of Information and Protection of Privacy Act*. But it is important to note that parents have a right under s. 9 of the *School Act* to request the school record of a student. If the school record includes information about a trans student's gender identity (pronoun, name) they are at risk of having that information disclosed to their parent, depending on how the school has stored information about the student's name and gender identity.

- **Inclusive extra-curricular activities:** students will be included and accommodated in all extra-curricular activities; and are supported to set up a Gender-Sexuality Alliance/ Gay-Straight Alliance¹⁴

A resource for teachers called SOGI 123 was created in 2018. The SOGI 123 website includes model policies, information about inclusive environments, and a network of SOGI educators in all 60 school districts in the province. Most importantly, there is a robust selection of curriculum resources for all grade levels. These resources are optional.¹⁵

In 2024, in response to transphobic disruption of schools and school boards, B.C. enacted bubble zone (called “access zones”) legislation, which enables the Cabinet to designate a zone around a school property where protests, disruption, intimidation or interference with entry to a school are prohibited.¹⁶ Almost all school boards in B.C. have been designated to have an access zone.

In B.C., when a student **comes out** to a teacher, the teacher may explore with the student whether it is safe to come out to their parents and, if so, support them with disclosing. This is because a student will be more likely to thrive if they have parental support. A school will never out a student to their parent as queer or transgender without the student’s consent. To do so would be a violation of students’ right to privacy.¹⁷

Coming out is the act of disclosing your own sexual orientation or gender identity.

A threat to all equality rights

If Moe’s Saskatchewan Party is correct in its gamble that transphobia is more politically saleable than equality, and if he wins the next election, it will serve as a signal to all political leaders that they can override the equality rights of transgender students with impunity.

But that will not be the only lesson.

The bigger lesson is that politicians will learn they can override *anyone’s* equality rights if those rights get in the way of whatever the current political priorities are. If a government can get away with legislation to restrict the rights of transgender youth, you can expect to see governments use the notwithstanding clause to advance all manner of discriminatory legislation in the future.

¹⁴ [SOGI Policies & Procedures | SOGI 123](#)

¹⁵ [Sexual Orientation and Gender Identity \(SOGI\) | B.C. Ministry of Education](#)

¹⁶ *Safe Access to Schools Act SBC 2024 c 22* came into force on May 16, 2024. As of June 9, 2024, “access zones” were established for the following schools: (a) schools operated by a board of education, other than the Qwam Qwum Stuwixwulh Community School in the City of Nanaimo; (b) schools operated by a francophone education authority and (c) schools operated by an independent school authority, other than listed Indigenous schools: [Order of the Lieutenant Government in Council #287 May 31, 2024](#).

¹⁷ [UR Pride Centre for Sexuality and Gender Diversity v Saskatchewan \(Education\) 2023 SKKB 204 | CanLII](#)

In 2023, 69% of delegates to the Conservative Party’s policy convention voted in favour of a motion that said youth under 18 should be prohibited from accessing “life-altering medicinal or surgical interventions” to treat “gender confusion and dysphoria”.¹⁸ Party leader Pierre Poilievre openly supports Alberta’s transphobic policy initiatives.¹⁹

*The fire that is currently licking around the fuel of the equality rights of transgender youth will consume **all** our equality rights.*

Within a generation, “equality rights” may be nothing but a quaint memory in Canada. Provincial and territorial governments will have eroded our legal protections by using the notwithstanding clause to satisfy the political whims of the day and keep themselves in power.

Responding to transphobia involves unlearning and relearning

The fight to protect and support trans kids involves recognizing that anyone who attended high school more than ten years ago was taught to believe certain things about sex and gender. That there are two, and only two, sexes. That sex and gender are the same thing. That you can tell a baby’s sex and gender by doing a “diaper inspection”. That sex and gender identity never changes over a lifetime. That the sexes are complementary, etc.

These things were taught as basic truths. But all of them are wrong.

There has since been a wave of education explaining how this information, taught in schools and accepted as unshakeable scientific truth, is mistaken.

Cisgender people must also learn how their ignorance about trans people contributes to the suffering they experience.

This involves unlearning mistruths, and relearning a new world in which there are more than two genders, where sex and gender identity are not the same thing, where gender is not determinable by one’s genitals, where gender may change over a lifetime, where sex is not only heterosexual...

Cis or **cisgender** refers to anyone whose gender identity corresponds with what is socially expected based on their sex assigned at birth.

Unlearning and relearning can be confusing and painful processes.

It’s important to remember that almost everyone has been subjected to this misinformation in some form or another. Whether in schools, or in popular culture. Transphobia is currently the norm. When responding to transphobia we must consider the big picture; that there is more success in changing the hearts and minds of people with

¹⁸ Correspondence from *Office of the Information and Privacy Commissioner* for BC dated May 22, 2024, establishes that any disclosure of personal information by a school district must comply with provisions of the FIPPA. Under s. 19(1)(a), a School District would be permitted to refuse disclosure if the information could reasonably be expected to threaten a person’s safety or mental or physical health. See also [OPIC Order 115-1996](#) with respect to a parent’s request to access a school counsellor’s notes about her children.

¹⁹ [Pierre Poilievre defends Alberta Premier Smith on transgender policies | CBC News](#)

transphobic views if they are met with understanding than if they are met with furious judgement.

But we must also meet transphobia with our determination to not let it affect our schools and our youth.

There are legal ways to fight back against transphobic initiatives in our schools and school boards. They are the subject of this handbook.

The transphobic attacks against school boards, teachers, staff, and students are a relatively new development for which there aren't many resources. The goal of this handbook is to orient all the players in the education system – school boards, principals, teachers and staff, students and parents – to their rights and to their responsibilities in relation to transphobia.

In this handbook you will find:

- An explanation of the B.C. *Human Rights Code* protections against discrimination and, in particular, against harmful speech in Chapter Two
- Options for school boards and for school trustees dealing with transphobia in Chapter Three

Chapter Two: Legal Ways to Deal with Transphobia

This chapter outlines the legal responses that are available to combat transphobia. These legal mechanisms are available to anyone, and they can be used by school boards and by individual school trustees to deal with transphobic attacks.

A transphobic attack may be

- against a school board:
 - by picketing outside a school board meeting
 - by trying to seize the agenda to create a platform for anti-trans views
 - by targeting individual trustees
 - by putting up posters alleging that they are harming kids
 - by doxing them on social media
 - by sending transphobic emails accusing them of being **groomers**, etc.
 - by a transphobic trustee publishing transphobic material or making transphobic statements at board meetings
- against a school:
 - by picketing at a school
 - by making requests to review library holdings for being “inappropriate”
 - by making requests to see, or dispute, the use of SOGI resources by classroom teachers to meet the prescribed learning outcomes of the provincial curriculum
 - by doxing the school on social media
 - by sending transphobic emails to administrators
- against an individual teacher, especially trans teachers:
 - by picketing at a school and naming the teacher on picket signs
 - by demanding that a child be removed from the class of a trans teacher
 - by doxing and misgendering the teacher
 - by posting misinformation about the teacher online
- against a student:
 - complaints about the student’s participation in gendered spaces including washrooms
 - complaints about trans girls participating on girls’ sports teams
 - outing a student
 - deliberate misgendering
 - harassment and bullying by other students

Grooming is the act of building a trusting relationship with a young person to covertly manipulate, coerce or force them to engage in sexual activities.

School boards have the **right** under the *School Act*:

- to conduct their business in a manner that is not disrupted by transphobia
- for their individual trustees, teachers, staff and students to be free from transphobic attack
- to address transphobia directed at students, teachers, administrators, or school boards
- to deal with a transphobic trustee²⁰

School boards have the **responsibility** to address incidents of transphobia in their school district, whether the transphobia is directed at the school board, administrators, teachers, staff, or students.

This chapter addresses the rights of school boards and school trustees, and how to enforce them. Further chapters of this handbook are planned to deal with the rights of administrators, teachers, and students. Those chapters will cover the responsibility of school boards to address transphobia in relation to each of those groups.

What transphobia may look like

“Transphobia consists of negative attitudes, feelings, or actions towards transgender people or transness in general. Transphobia can include fear, aversion, hatred, violence or anger towards people who do not conform to social gender roles. Transphobia is a type of prejudice and discrimination, similar to racism, sexism, or ableism, and it is closely associated with homophobia. Transgender people of color can experience many different forms of discrimination simultaneously.

Transgender youth often experience a combination of abuse from family members, sexual harassment, and bullying or school violence. They are also disproportionately placed in foster care and welfare programs compared to their peers. Adult transgender people regularly encounter sexual violence, police violence, public ridicule, misgendering, or other forms of violence and harassment in their daily lives. These issues cause many trans people to feel unsafe in public. Other issues include healthcare discrimination, workplace discrimination or feeling under siege by conservative political or religious groups who oppose LGBT-rights laws. Discrimination and violence sometimes originates from people within the LGBT community or feminist movements.

²⁰ See Chapter 3 with respect to the relevant *School Act* provisions

As well as increased risk of violence and other threats, the stress created by transphobia causes negative mental health outcomes and can lead to drug use disorders, running away from home (in minors), and suicide.”²¹

Both individuals and institutions may be transphobic. Transphobic individuals often target supporters of trans rights by calling them names, especially online. Trans rights supporters may be called “groomers”, “pedophiles”, “perverted” or “crazy”.

Some of the most common transphobic beliefs are:

- There are only two sexes: male and female
 - Gender identity is a myth
 - Sex assigned at birth is the only valid identity protected by law
- Being trans is a mental illness that should be treated with conversion, not gender-affirming care
 - Providing gender-affirming care to young people is child abuse
- Being trans is nothing more than a popular trend that the youth are being brainwashed into following by liberal media
- Saying “God doesn’t make mistakes”
- Trans people are pedophiles who are grooming children
- Parents are in charge of their child’s gender identity and expression
- Being asked to respect a person’s pronouns is a violation of free speech
- Trans women are a threat to cisgender women
- Allowing trans women to participate in women’s sporting activities is unfair to cisgender women

Transphobic institutions may inadvertently or deliberately discriminate against trans people. A common source of inadvertent discrimination is information systems which offer spaces only for ‘M’ and ‘F’ to respond to a question about gender, so people whose gender identity is non-binary cannot be recorded properly. An example of deliberate discrimination would be a policy decision that insists everyone must play on the sports team that aligns with the gender they were assigned at birth.

Both of those examples are transphobic because they cause a negative impact on the transgender community. Both of those examples are also human rights violations.

When governments are transphobic

Worst of all, a government may deliberately make policy choices or enact legislation that harms trans people and cancels their human rights. Chapter One outlines Saskatchewan’s 2023 legislation, New Brunswick policies, and Alberta’s planned policies: frightening

²¹ [Transphobia | Wikipedia](#)

examples of governments deliberately targeting trans youth. In B.C., we currently have a government that is supportive of SOGI initiatives and the rights of trans youth.

Harmful transphobic speech

At its root, harmful transphobic speech denies the existence of trans people through erasure and therefore denies their right to exist.²²

When transphobic people copy their posts to ‘Libs of TikTok’ or other extreme right-wing sites and social media accounts, it can result in a tsunami of harmful emails and threats. Transphobic people may go so far as to publish someone’s name, address, email, or phone number. And then the target may not be safe.

School boards and school board trustees are one target of that kind of harassment. Transphobic people calculate that if they make life hard enough for a progressive school trustee, that trustee won’t run again; the door is then open to transphobic control of school boards.

What can be done to address this harassment?

For trustees and school boards being targeted by transphobes, there are four ways to deal with the problem, from a legal point of view.

- **Harmful speech as a human rights violation:** file a human rights complaint for harmful speech
- **Unaddressed harmful speech as discriminatory:** file a human rights complaint for discrimination
- **Hate speech as a crime:** talk to the police
- **Defamation:** sue for defamation

If the person being targeted is at work, they may also have a WorkSafeBC claim.

- [WorkSafeBC](#) requires all employers to have a policy about how they deal with bullying and harassment, and WorkSafeBC investigates allegations of bullying.

In 2017, the Vancouver School Board was in a battle with the Ministry of Education about funding. The Minister of Education made a complaint to WorkSafeBC alleging that trustees were bullying school board staff. WorkSafeBC investigated and concluded that²³ though there was no evidence that any trustees knew that their comments or conduct would humiliate or intimidate its senior staff, some of the behaviour of school trustees towards staff could be perceived as bullying and harassment.

²² For more detail about forms of transphobia see GLAAD’s [Guide to Anti-LGBTQ Online Hate and Disinformation](#) or [Transphobia](#) by TransActual UK.

²³ [Vancouver School Board workplace made toxic by trustee behaviour, report finds | CBC News](#)

The report noted that commonly used forms of discipline to address workplace harassment were not available because trustees were not “employees” of the VSB, and only the Minister of Education could dismiss trustees under the *School Act*.

In response to that report, the Minister fired all the trustees and appointed an administrator. A by-election was held in October 2017 to replace all trustees.

Harmful speech as human rights violation

Anyone who is affected by transphobic speech can file a complaint under the B.C. *Human Rights Code*, including school trustees, administrators, teachers, students, or parents.

The *Human Rights Code* says:

7 (1) 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

(a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or

(b) is likely to expose a person or a group or class of persons to hatred or contempt because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or that group or class of persons.

(2) Subsection (1) does not apply to a private communication, a communication intended to be private or a communication related to an activity otherwise permitted by this Code.

(Note that this section does not apply to emails sent to one person, since that would be a ‘private communication’.)

Here’s an example of a case in which a person was found to be in violation of s. 7 of the *Human Rights Code* because of the transphobic material he was publishing.

Morgane Oger was a transwoman running for election in Vancouver. Bill Whatcott distributed a flyer titled “Transgenderism vs Truth”. Among other things, the flyer said that the “truth” is that Morgane Oger was male and suggests that anyone who says otherwise, including the NDP and the media, is “promoting falsehoods”:

“Because gender is God given and immutable, "transgenderism" is an impossibility. A male cannot "transition" into a female, nor can a female "transition" into a male. One can only cross dress and disfigure themselves [sic] with surgery and hormones to look like the gender they are not.”

The flyer went on to warn that the ‘transvestite and homosexual lifestyle’ puts people at greater risk of disease, and drug and alcohol abuse. It invoked the bible and warned of the “lake that burns with fire and sulfur, which is the second death”.

The Human Rights Tribunal held that though Whatcott has a right to free speech, and to hold a religious view that he should try to stop a transgender person from being elected, those rights do not extend to publishing the flyer. Since the flyer demonstrated an intention to discriminate against Oger in public life and was likely to expose Oger and transgender people to detestation and vilification, it contravened s. 7.

The tribunal awarded \$35,000 to Oger as compensation for injury to dignity.

Harmful speech online

The internet has posed a challenge for courts, who are accustomed to deciding which court has jurisdiction based on where something happened.

But a post on the internet can happen ‘everywhere’.

In the context of defamation law, where someone in one province makes a defamatory statement about someone else on the internet, and the target of that statement lives in a different province, the person targeted for defamation can sue in the province where they live, notwithstanding that the person who made the post doesn’t live there.

We think that the same logic applies to human rights cases about harmful speech online, though to date there aren’t any cases that say so. We assert that you can file a human rights complaint under the B.C. *Human Rights Code* if the speech impacts someone in B.C.

There is currently no federal legislation governing harmful speech.

The federal government has recently introduced the *Online Harms Act*, a bill which will create a Digital Safety Ombudsperson and will require social media platforms to be accountable for hate speech. That bill is explained more fully below.

The *Online Harms Act*

The federal government has introduced legislation to require social media platforms to safeguard users from online hate. The *Online Harms Act* targets online content which:

- sexually victimizes a child or revictimizes a survivor
- shows intimate content communicated without consent
- bullies a child
- induces a child to harm themselves
- foments hatred
- incites violence, or
- incites violent extremism or terrorism

Social media services would have a duty to act responsibly, to protect children, and to make certain content inaccessible, specifically content that sexually victimizes a child or revictimizes a survivor; or intimate images posted without consent.

Under the proposed legislation, a Digital Safety Commission would be established. Complaints can be made to the Digital Safety Ombudsperson.

Unaddressed transphobia as discrimination

The school board has a legal duty to maintain a discrimination-free environment. This includes maintaining a discrimination-free environment at school board meetings.

If school boards permit transphobic speech at school board meetings, whether by a trustee or by a member of the public, they may be in violation of section 8 of the *Human Rights Code*, which guarantees the right to receive services or facilities customarily available to the public without discrimination, including discrimination against gender expression and gender identity.

Section 8 of the *Code* prohibits the denial or discrimination in the provision of services or facilities customarily available to the public because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of a person or class of persons.

A section 8 complaint could be filed by anyone at the meeting where transphobia went unaddressed, against the board. These remedies will be outlined in more detail in the chapters for teachers, staff, school administrators and students.

How to file a provincial human rights complaint

- It is easy to file a complaint: <https://www.bchrt.bc.ca/complaint-process/complain/>
- Free legal services to people who need help with a provincial human rights complaint is available: <https://bchrc.net/>
- Lawyers Against Transphobia may also be able to offer advice: lawyersaginsttransphobia@gmail.com

The human rights tribunal process takes a long time – some people may wait up to two years to get to a hearing. However, where a matter is urgent, there is an expedited process available. A complaint about ongoing hate on social media would probably be accepted in the expedited process.

Note: if you are complaining about anything online, make sure that you document the complete interaction (e.g. if there is a post with many comments, make sure to capture the post, and all the comments).

Also, make a note of who did the documenting, so when you get to a hearing you can testify, “yes, I personally documented this post and captured all of the comments in relation to it”.

In general, the first step in the process, after the respondent has a chance to write a response to the complaint, is a suggestion for a mediation. If you agree to have a mediation, the tribunal will appoint a mediator. You can take an advocate with you to the mediation.

If you don't agree to mediation, or if you don't arrive at an agreement at mediation, there will be a hearing. A hearing is similar to a trial.

You must file your human rights complaint within one year of the last incident of harmful speech.

Hate speech is a crime

The *Criminal Code* makes it a crime to incite hatred against an identifiable group. Section 319 of the *Criminal Code* says:

Everyone who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding two years or (b) an offence punishable on summary conviction.

This section of the *Criminal Code* draws the line between freedom of speech, which is a right guaranteed under the Charter of Rights, and equality rights, also guaranteed under the Charter.

Not every transphobic blog post or commentary, for example, is criminal hate speech. The *Code* prohibits hate speech which:

- incites hatred
- against an identifiable group
- where the incitement is likely to lead to a breach of the peace.

To get a conviction under this section of the *Code*, it is necessary for the Crown to prove each of those elements of the offence.

In B.C., if a person wants to pursue a hate crime charge, the RCMP has a central office to consider the complaint. Next, the RCMP refers proposed charges to the Crown to approve. There are two Crown counsel (lawyers for the government) whose job is specifically to deal with hate crimes.

If you are considering a criminal charge, start by talking to the Crown counsel in your district. You can get their contact information at

<https://dir.gov.bc.ca/gtds.cgi?searchString=Crown%20Counsel&for=>

Suing for defamation

If someone makes a public statement about you that harms your reputation by spreading incorrect information, you can sue them for defamation. A school board could also sue for defamation, since the law permits an incorporated body to sue.

The best-known case about defamation relating to schools in B.C. is *Hansman v. Neufeld*.²⁴

Barry Neufeld was a school trustee in Chilliwack who made online homophobic and transphobic posts. For example, Neufeld criticized the fact that SOGI 123 materials instruct children “that gender is not biologically determined, but is a social construct”; and said that permitting children to “choose gender is nothing short of child abuse”. He also claimed that SOGI 123 “enables dysfunctional behavior and thinking patterns” and “coddles and encourages” what he regarded as the “sexual addiction of gender confusion”.

Glen Hansman was a gay man, a teacher, and a former president of the BC Teachers’ Federation (a provincial union). He was prominent in his criticisms of Neufeld’s posts, which he called bigoted, transphobic and hateful. Hansman publicly questioned whether Neufeld was suitable to hold elected office.

Neufeld sued Hansman for defamation.

Hansman responded to the defamation lawsuit by asking the court to dismiss it under the Protection of Public Participation Act (PPPA). That law was enacted to prevent people or corporations from shutting down public debate by suing for defamation.

The PPPA balances the right of someone to sue where their reputation is maligned, with the right of members of the public to comment on and criticize those views. The PPPA is essentially a screening mechanism. If a person is successful in their PPPA application, then the defamation suit can’t go forward to trial.

To succeed in a PPPA application, Hansman had to show that the comments in issue related to a matter of public interest. Once he had done that, Neufeld had to prove that his defamation action has ‘substantial merit’; that Hansman would lose if the case went to trial because Hansman had no valid defence; and that the harm to him as a result of Hansman’s criticism of his views was serious enough to outweigh the public interest in protecting Hansman’s right to comment. The court must balance the value of free speech and the value of the right to be free from discrimination.

The case went all the way to the Supreme Court of Canada, which ruled in Hansman’s favour. They shut down Neufeld’s defamation action under the PPPA. In considering the case, the court referred to the Charter of Rights and Freedoms, which is part of the constitution of the country.

²⁴ [Hansman v. Neufeld, 2023 SCC 14 | CanLII](#)

Section 2(b) of the Charter protects freedom of speech²⁵; section 15²⁶ protects the equality rights of people and the right to be free from discrimination.

The court said

“...The closer the expression lies to the core values of s. 2(b) [of the Charter of Rights], including truth-seeking, participation in political decision-making and diversity in the forms of self-fulfillment and human flourishing, “the greater the public interest in protecting it” “not all expression is created equal, and the level of protection to be afforded to any particular expression can vary widely according to the quality of the expression, its subject matter, the motivation behind it, or the form through which it was expressed.”²⁷

The court gave special consideration to the fact that in making his comments, Hansman was protecting a vulnerable or marginalized group.

What are the takeaways from the precedent-setting *Hansman* case?

First, that trustees cannot use their platform to say bigoted and transphobic things with impunity. The public has the right to point out a trustee’s transphobia or homophobia (or racism, or any other kind of discrimination), **even if their criticisms of the trustee may cast the trustee in a negative light.**

Second, that if a member of the public makes derogatory comments about an individual trustee, that trustee can sue for defamation. In other words, a trustee can file a human rights complaint against the person making transphobic statements, or they can sue them for defamation if the comments portray them in a negative light.

In some communities, transphobic people are targeting individual trustees for harassment. The transphobic right may use this kind of post as a tactic to harass trustees and make them either resign, or not run again. Over time this would mean that school boards

²⁵ Section 2 of the Charter of Rights and Freedoms says:

Everyone has the following fundamental freedoms:

- a) *freedom of conscience and religion*
- b) *freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.*
- c) *freedom of peaceful assembly; and*
- d) *freedom of association.*

²⁶ Section 15(1) of the Charter says:

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Because of the language in this section, “and in particular”, the Supreme Court of Canada has extended s. 15 to apply to marginalized groups who are not listed, in particular queer and trans people.

²⁷ *Hansman v Neufeld* paragraph 79.

included more transphobic voices, and that in turn could influence the ways that schools in a district are run.

A trustee says:

“As school trustees our photographs are displayed on the district website. My fellow trustees and I are aware of the CSIS report about the rise in anti-2SLGBTQI+ hate. Although I’m a cis white woman – I am scared for my safety in the community. People know who I am and there is a segment of our population who believes I am trying to indoctrinate children and “make them trans”.

When I am out in the community and someone looks at me as though they recognize me, I worry they are part of one of these groups and want to do me harm.”

This kind of targeting must be actively resisted.

Chapter 3: Defending School Boards and Meetings from Transphobic Attacks

School boards and school trustees are under attack by transphobic and homophobic groups. They have become a primary focus for individuals and groups intent on ending education that reflects and includes the lived experiences of 2SLGBTQIA+ people, or that discuss gender identity, gender expression, or sexual orientation; attempting to end support for trans students in schools.

Chapter Two included examples of transphobic attacks against school boards, schools, and school personnel. The attacks directed at school boards and trustees include:

- disruptions of school board meetings
- protests outside of school board offices
- coordinated political efforts to elect trustees who will push a transphobic agenda
- threats and harassment of individual trustees and administrators online and in the community, including allegations they are indoctrinating children and allowing pornography in schools
- transphobic rhetoric from a school trustee.

We have also seen internal disruption within school boards where trustees who voice their concerns about transphobic and homophobic movements have been targeted by their colleagues and alienated from their boards.

This chapter supports school boards and individual trustees confronted with transphobic harassment, whether from members of the public including parents, other trustees, school administrators, teachers and staff. It offers a clear statement of the law and provides tools that trustees can use to conduct safer school board proceedings and protect themselves against transphobic attacks.

It's the law

While you read through this guide and navigate these difficult circumstances it is important to remember that: 1) discrimination on the basis of sex, sexual orientation, and gender identity or gender expression is against the law; and 2) hate speech is against the law.

Employment discrimination

Discrimination on the basis of sex, sexual orientation, and gender identity or gender expression, among other identities (the “protected grounds”²⁸) is prohibited by the B.C.

²⁸ The complete list of grounds protected by the *Human Rights Code*, as those grounds relate to services customarily available to the public, are: Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or

Human Rights Code in employment, and in the provision of “goods or services customarily available to the public”, including education. Discrimination can include bullying or harassing someone on the basis of a protected ground; making comments of a derogatory nature; or failing to make or uphold policies to protect against discrimination and to ensure a discrimination-free environment. Discrimination can also include a poisoned learning or working environment, where students or employees are negatively impacted by discriminatory words and actions and those words or actions are unaddressed. A poisoned environment may be caused by a single serious incident or by the impact of words and actions that builds up over time.²⁹

Though the B.C. *Code* lists protected grounds separately, people may be marginalized for more than one reason: for example, they may be a trans woman of colour. People with compound marginalizations always experience more discrimination and harassment than people without.

Hate speech is prohibited by the *Human Rights Code*

Speech that “indicates discrimination or an intention to discriminate against a person or class of persons” or is “likely to expose a person or a group or class of persons to hatred or contempt” is prohibited by section 7 of the *Code*.³⁰

A complaint under the *Human Rights Code* must be proved “on a balance of probabilities”, it must be “more likely than not”.

Hate speech can be a criminal offence

Under section 319(1), everyone who, by communicating statements in a public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of an indictable offence punishable by up to two years'

expression, or age (s. 8). The complete list of grounds protected by the *Human Rights Code* as those grounds relate to *employment* are: Indigenous identity, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person (s. 13).

²⁹ [Poisoned work environment | British Columbia's Office of the Human Rights Commissioner](#)

³⁰ Section 7 of the *Human Rights Code* provides:

7 (1) 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

(a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or
(b) is likely to expose a person or a group or class of persons to hatred or contempt because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or that group or class of persons.

(2) Subsection (1) does not apply to a private communication, a communication intended to be private or a communication related to an activity otherwise permitted by this Code.

imprisonment, or of a summary conviction offence.³¹ Because there is a requirement in s. 319 that the ‘incitement’ is likely to lead to a breach of the peace, and because the offence must be proved beyond a reasonable doubt, it is a more onerous option than s. 7 of the *Human Rights Code*. A school board might consider pursuing a criminal charge in the most egregious of circumstances.

The school board environment

B.C. is divided into 60 school districts, each governed by a school board. Although curriculum and budgets are effectively set by the Ministry of Education, school boards are responsible for setting policy and determining how to use additional funds to address issues and needs particular to their district. School boards are made up of elected trustees and their responsibilities and powers are set out in the *School Act*.³² The British Columbia School Trustees Association describes the role of school boards as follows:

- Setting local policy for the effective and efficient operation of schools
- Employing the staff necessary for school district operations
- Establishing conditions of employment for employees
- Preparing and approving the school district’s operating budgets and capital plans
- Hearing appeals from parents and students³³

School boards are also responsible for hiring a Superintendent of the District. Superintendents are responsible for the supervision of schools and senior staff. They also oversee the district budget and implement approved programs in line with the district’s strategic plan. The Superintendent is accountable to their Board.

SOGI in B.C. schools

In September 2016, the Ministry of Education directed all school boards to reference sexual orientation and gender identity (SOGI) in district and school codes of conduct.

The province has approved the use of SOGI 123,³⁴ a resource for teachers which offers sample policies, curriculum resources, and Pro-D resources about sexual orientation and gender identity to school boards.

The Campbell River School Board has published an excellent guide: *Frequently Asked Questions about SOGI 123*.³⁵

B.C.’s policies in this regard stand in contrast to the explicitly transphobic policies and laws adopted in other provinces. As outlined in Chapter One, Saskatchewan has passed a law

³¹ [Criminal Code \(justice.gc.ca\)](http://justice.gc.ca)

³² [School Act RSBC 1996 c 412 | CanLII](#)

³³ [The Role of Boards of Education and Trustees in BC | BCSTA](#)

³⁴ [SOGI 123](#)

³⁵ [Frequently Asked Questions about SOGI 123 | Campbell River School District 72](#)

which cancels trans students' constitutional right to be free from discrimination and requires schools to 'out' trans students to their parents. New Brunswick has a policy to a similar effect. Both provinces are currently in court.

Who are trustees?

How trustees are selected

In accordance with the *School Act*, board elections are held every four years, and anyone can run for the position of a trustee so long as they are 18, a Canadian citizen, have resided in B.C. for the past six months, and are not disqualified for any of the reasons set out in the *School Act* or regulations. The number of trustees in a particular district is determined by the minister of education as is the determination of trustee electoral areas. The *School Act* requires that boards have either 3, 5, 7, or 9 trustees and must include a board chair. A vice chair may also be elected. If a seat is open between elections, a by-election may be called to elect a trustee to take that seat.

Trustees can run on an individual platform or as part of a larger "political group". Though in the past most school board candidates were individuals, we have recently seen coordinated action in B.C. for members of certain political groups to be elected to school boards.

One example is Parents Voice BC. The organization was founded in June 2022 with the specific mandate of running candidates across the province to advance a right-wing, transphobic agenda. Parents Voice BC, like many transphobic groups, have used "parent's rights" and misinformation to lead people to believe that parents are being excluded from their children's education. Parents Voice BC has been a disruptive force on some school boards and at school board elections, taking the focus away from important educational issues and the critical job of ensuring our children get the best education possible.

Trustee responsibilities when faced with transphobia at school board meetings

School boards have a legal responsibility to follow human rights law in conducting their business. That includes:

- dealing with transphobic speech by a member of the public in school board meetings
- addressing transphobia from a school trustee (We deal with the school board's obligations in relation to teachers, staff and students in the chapters dealing with them)

If a school board permits transphobia – for example, by permitting a member of the public to make transphobic speeches at a school board meeting – the board may itself be liable for a breach of the *Human Rights Code*. If they are faced with transphobic actions,

trustees are legally required to act to address the discrimination by applying the *Human Rights Code*, the board's own bylaws and policies, and general laws including the *School Act* and the *Criminal Code*.

Tools to address transphobia

To be prepared for how to deal with incidents of transphobia or other kinds of human rights violations, a board can adopt policies which govern all aspects of its operation. It is mandatory to have school Codes of Conduct, governing activities at schools; but it is also possible to develop policies setting out standards for trustees and for the conduct of board meetings.

Implementing a Code of Conduct for trustees and board meetings

The Ministry of Education and the B.C. School Trustees Association released the following criteria for school trustee codes of conduct:

- Emphasis on student achievement, equity, and well-being
- Alignment with BCSTA's six principles/ standards (integrity, respect, confidentiality, responsibility, conflict of interest and relationships;
- Alignment with existing provincial and federal legislation (i.e., *Criminal Code*, *BC Human Rights Code*, *Freedom of Information and Protection of Privacy Act*, *School Act*, *Workers' Compensation Act*);
- Provisions on:
 - respectful workplaces and relationships with others;
 - anti-racism, reconciliation & relations with local First Nations;
 - acceptable use of social media;
- policies and procedures for breaches and sanctions with public accountability;
- mechanisms to regularly review and affirm the code;
- board training, including with trustee onboarding; and
- Plain language.³⁶

Boards can use this framework to develop Codes of Conduct which govern trustees as they carry out their duties.

Boards can specify in such policies, for example, that their meetings will be conducted in a manner that respects the *School Act*, and the B.C. *Human Rights Code* prohibition against speech that indicates discrimination or an intention to discriminate against a person, a group, or class of persons or is likely to expose a person or a group of persons to hatred or contempt.

³⁶ [Letter to Board Chair of School District No. 63 \(Saanich\) August 1, 2023](#)

Rules governing board members may specify, for example, that trustees will publicly support decisions of the Board which have been arrived at by majority vote.

It is useful to include, in a code of conduct, what will happen if someone, including a trustee, is alleged to have breached the code. The code may include provisions about how an investigation will be done, what will happen with the results of the investigation, and what the possible sanctions will be if a person – including a trustee – is found to have breached the code.

Boards can also establish policy and procedures about how board meetings will be conducted – for example, virtually or in person; and how the public may make presentations to the Board.

The B.C. School Trustees Association has published information material about codes of conduct for trustees.³⁷ And sample trustee codes of conduct are available.³⁸

A board may choose to establish policies governing its operations, or they may choose to codify those rules as bylaws.³⁹

A board has the power to deal with a trustee who is engaging in improper conduct at a school board meeting. Section 70 of the *School Act* provides:

70 (1) The chair or other member presiding at a meeting of the board may expel from the meeting a person, other than a trustee, who the presiding member considers guilty of improper conduct.

(2) A majority of the trustees present at a meeting of the board may expel a trustee from the meeting for improper conduct.

(3) A person who disturbs, interrupts or disquiets the proceedings of a meeting of a board commits an offence.

Implementing and using district policies

The Ministry of Education requires school boards to include sexual orientation and gender identity in their district and school codes of conduct. But there are stark differences in the strength and effectiveness of the policies created by the various school boards across the province.

³⁷ See BCSTA's [Rights & Responsibilities: a Resource Guide for School Trustees](#) and [New Trustee Orientation Guide](#)

³⁸ [Qualicum School District Trustee Handbook 2023-2024](#)

³⁹ The board has the power to make bylaws under section 68 of the *School Act*. That section requires that a bylaw must be given three distinct readings, which (unless the board is unanimous) must be at separate meetings.

Clear and complete policies are an effective tool for trustees to rely on in addressing transphobia from any quarter.

When developing policies, consider that a transgender student has an unfettered right to assert their gender identity, regardless of the sex they were assigned at birth; and to use a name they choose. They also have the right to change that gender identity or name. In addition, a trans student has a right to have their gender identity and name kept confidential, including from their parents; so, care must be taken to protect any record of a student's gender identity so that it cannot be accessed by their parent requesting a copy of the student record. This is addressed more fully in the chapter on student rights (forthcoming).

- Trans students, staff, teachers and school board members have a right to
 - express their gender identity in any way they wish;
 - have access to a gender-neutral washroom; and to use the washroom that best fits with their gender identity.
- A student has a right to
 - Participate in gendered activities including sports according to their determination of which gendered teams best fit with their gender identity
 - To use learning resources that reflect people with varying gender identities and gender expressions
- Students have a right to establish Gay Straight Alliances

Codes of conduct should address gender identity, gender expression, and sexual orientation explicitly. These principles will be elaborated more fully in the teachers' and students' chapters of this handbook.

Here are some sample policies:

- Nanaimo Ladysmith Public Schools' [*Administrative Procedure 347 – Sexual Orientation and Gender Identity*](#)
- Greater Victoria School District's [*Regulation 4305 Gender Identity and Gender Expression*](#)

Managing disruptions at school board meetings

The *School Act* provides that Boards are required to meet as often as necessary and at least once in every three months. Most school boards meet once a month.

School board meetings have been the site of transphobic and homophobic protests and disruptions by members of the public opposed to the inclusion of trans/2SLGBTQIA+ identities in education, SOGI resources, and the open presence of 2SLGBTQIA+ people in schools.

In September 2023, an Abbotsford School Board meeting was disrupted when 300 transphobic/homophobic protestors attended and attempted to speak to issues concerning SOGI. The meeting could not continue, and staff and trustees were escorted out of the building by police.

After the disruption of their board meeting in December 2023, the Vernon school board moved to online meetings only.

Similar disruptions occurred in Kelowna and Mission in the Spring of 2023.

A trustee says:

Before we moved to online meetings, I recall feeling a sense of dread the evening before a school board meeting. The worry that there would be some kind of conflict or aggression at a school board meeting was having a significant impact on me. I recall it being very daunting to deal with these issues in the moment.

But moving to an entirely online meeting platform has had a real impact on our ability to do our jobs. It's a loss for the community and for those who wish to present, particularly students.

Legislative authority to control meetings: The School Act

Under the *School Act*, trustees have significant powers to manage and control school board meetings. The *School Act* contains several provisions relating to the conduct of school board meetings.

Section 69 of the *School Act* states that meetings of the board are open to the public EXCEPT where the board determines that the public interest requires persons other than trustees to be excluded from a meeting. Section 69 of the *School Act* says:

69 (1) Subject to subsection (2), the meetings of the board are open to the public.

(2) If, in the opinion of the board, the public interest so requires, persons other than trustees may be excluded from a meeting.

Section 70 gives the chair power to regulate the meeting:

70 (1) The chair or other member presiding at a meeting of the board may expel from the meeting a person, other than a trustee, who the presiding member considers guilty of improper conduct.

(3) A person who disturbs, interrupts or disquiets the proceedings of a meeting of a board commits an offence.

In a recent Ontario case, *Burjoski v Waterloo Region District School Board*, a court upheld the determination of the chair of a school board to stop a citizen's presentation to a school

Most recently, these groups have started campaigns aimed at banning books from school libraries. As part of their campaign, groups have published posters with the photos of trustees and allegations that they are promoting pornography in school. The posters are all over the community.

It's important to understand that this transphobic movement is not due to a lack of understanding about inclusion – it's **hate**. There's no amount of "myth busting" about SOGI that will put a stop to hate.

board meeting. In that case, the chair had begun the meeting by warning that discourteous language or statements that might contravene human rights legislation would not be tolerated.

The citizen, Burjoski, said that some books in the library “make it seem simple or even cool to take puberty blockers or opposite sex hormones”. The chair warned Burjoski that her participation might be contravening the Ontario Human Rights Code, but she carried on with her presentation. The chair then stopped her presentation. Burjoski went to court to argue that the chair’s decision was unreasonable because it violated her right to freedom of expression, was a breach of procedural fairness, and was biased.

Burjoski lost.

Meeting guidelines

The first line of defence in managing or preventing meeting disruptions is to develop strong policies and procedures to control board meetings. In Vernon, for example, School District #22 still allows presentations and questions from the public, but the questions must be provided to the board in advance of the meeting.

The Vancouver School Board *Public Delegation Board Meetings* policy is similar. They too, require that any member of the public wanting to address the board must provide a summary of the presentation they wish to give several days before the meeting, giving the Board the opportunity to refuse the delegation if it is not pertinent to Board business.

- The policy specifically states that a presentation may not contravene the B.C. *Human Rights Code*.
- The policy limits presentations to 5 minutes and specifies that there will be no consideration of the issues raised by the delegates at that meeting, and there will be no debate.
- Finally, the policy says that if anyone contravenes the guidelines or causes a disturbance, they will be asked to leave the meeting.⁴⁰

Such policies enable a Board to

- refuse permission to speak if the written submission is transphobic or homophobic
- shut down a speaker who veers from their written presentation
- manage debate

Similar policies from the Surrey School Board and the Vernon School Board are available online.⁴¹

⁴⁰ [Public Delegation Board Meetings | VSB](#)

⁴¹ See SSB [Policy 2400 - School Board Meetings](#) and VSB [Board Meetings](#)

A trustee says:

For our budget meeting in 2024 – we had to hire security to ensure the safety of the trustees and the public.

Expelling Individuals

The chair of the board or any other trustee at the meeting also has the power to expel individuals, other than trustees, from a meeting where that person is determined to be guilty of improper conduct.

Expelling trustees from meetings

Occasionally, it is a trustee who is expressing views which are transphobic or homophobic.

Such a trustee may be expelled from the meeting for contravening the harmful speech section of the B.C. Human Rights Code, either by the chair or by vote of the majority of trustees. That power is in S.70(2) of the *School Act*.

In the *Burjoski* case mentioned above, one of the trustees challenged the chair's decision to stop Burjoski's presentation. The chair called for a vote of the trustees, and the trustees voted to uphold the chair's decision.

While in that case the trustee accepted the chair's decision, it is possible to imagine a situation where that is not the case, and where a trustee goes on to disrupt the meeting. In such a situation, the chair could request a vote of the other trustees to expel the disruptive trustee.

After the *Burjoski* case, in which the court upheld the decision of the chair to expel Burjoski, the Waterloo Region District School Board dealt with a second case. A trustee, Ramsay, accused the Chair of having incited 'moral panic' in the community by his handling of the *Burjoski* situation. He repeated his position at a second meeting, and tweeted about the board, calling it a farce and criticizing the Chair. After an investigation in accordance with its code of conduct, the Board voted 6-3 to sanction Ramsay for violations of the code of conduct. Ramsay was suspended from board meetings for four months.

Ramsay sought review of the penalty. But in *Ramsay v Waterloo Region District School Board*,⁴² the Court upheld the board's disciplinary actions. The court stressed the fact that boards are permitted to adopt and enforce Codes of Conduct on their members.

⁴² *Ramsay v Waterloo Region District School Board* 2023 ONSC 6508

Remedies for improper conduct by a member of the public at a school board meeting

The *School Act* treats the conduct of school board meetings very seriously. Section 70(3) of the *School Act* says that any person who disturbs a school board meeting has committed an offence.

If a person disrupts a school board meeting, a board may rely on s.177(2) of the *School Act* to force a person to leave school board property and to prohibit that person from returning except with permission. Section 177(2) can be used by several players in the education system, including principals, vice principals, directors of instruction or any other person authorized by the board. Section 177(4) says that the person making the order (principal, vice principal, etc.) may request the assistance of a peace officer. Vernon had the help of the RCMP to deliver a no trespass order to the individual who disrupted the school board meeting in December 2023. In Vernon, the school district has an informal understanding with the Vernon RCMP to deliver no trespass orders on request. In many districts, that task falls to an RCMP Liaison Officer.

If a person on whom a no trespass order has been served returns, Section 177(3) says the person is committing an offence.

Section 177 provides:

Maintenance of order

177 (1) A person must not disturb or interrupt the proceedings of a school or an official school function.

(2) A person who is directed to leave the land or premises of a school by a principal, vice principal, director of instruction or a person authorized by the board to make that direction

(a) must immediately leave the land and premises, and

(b) must not enter on the land and premises again except with prior approval from the principal, vice principal, director of instruction or a person who is authorized by the board to give that approval.

(3) A person who contravenes subsection (1) or (2) commits an offence.

(4) A principal, vice principal or director of instruction of a school or a person authorized by the board may, in order to restore order on school premises, require adequate assistance from a peace officer.

Response to transphobic attacks on a trustee

If a trustee is personally attacked, either by a transphobic member of the public or by a transphobic trustee, the trustee has some personal legal options, in addition to the options available to the Board.

If a member of the public says transphobic or homophobic things to or about a particular trustee in a school board meeting, the trustee's first line of defence is to ask the Chair to deal with the situation.

The chair of the board meeting has the power to:

- tell the member of the public to stop transphobic speech
- if the member of the public does not do so, ruling them out of order
- if the member of the public persists, asking the police for assistance in evicting them from the meeting

A board may also consider using its power under s. 177 of the School Act to forbid the member of the public from returning to school board meetings.

But if a school board continues to permit transphobic or homophobic targeting of the trustee at a meeting, without addressing it, a trustee may also be able to:

- file a human rights complaint against that person for 'harmful speech' under s. 7⁴³ of the *Code*
- file a human rights complaint against the school board for permitting the harmful speech to continue, thus denying the targeted trustee a space free from discrimination⁴⁴
- sue that member of the public for defamation

The process to file a human rights complaint is explained in Chapter 2.

To sue for defamation, the trustee would need to show:

- that the member of the public made the statement
- that the statement was false
- that the member of the public knew or should have known that the statement was false
- that the statement caused harm to the reputation of the trustee

⁴³ See above for details of s. 7 of the *Code*.

⁴⁴ Such a complaint would be filed under section 8 of the *Code*, for a denial of 'services or facilities customarily available to the public'. In this case the service is the school board meeting; the 'public' is the group of trustees. In the human rights context, 'public' may be narrower than the entire public.

A defamation action needs to be filed in B.C. Supreme Court. Generally, a lawyer's help is required.

Funds to pay for legal actions

It is expensive to start legal actions, so remedies for targeted trustees are hollow if they must also pay for the legal fees associated with taking action.

Typically, at the end of a court case, the losing party will have to pay **costs**, that is, part of the legal fees of the winning party. This amount goes some way to compensating the person who brought the suit; but it never covers all of the legal fees.

The board can consider a policy that indemnifies a targeted trustee who was successful in their human rights complaint or legal action for any legal fees not covered by an award of costs.

Currently, the *School Act* (s. 95) enables the board to pass a bylaw to indemnify a trustee if they are sued, but there is no similar provision enabling a board to reimburse expenses associated with launching a lawsuit.

Conclusion

This handbook was written to assist the hardworking school trustees in B.C. who are being targeted with transphobic and homophobic abuse. It has outlined some of the ways that school boards are currently under attack by transphobic and homophobic people, and ways to prevent and address this violence. This handbook will be updated as situations develop.

We will also release chapters outlining the situation for teachers, administrators, staff, students and parents.

Feel free to reach out to Lawyers Against Transphobia at lawyersagainsttransphobia@gmail.com