

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

B E T W E E N :

GLEN HANSMAN

Appellant

- and -

BARRY NEUFELD

Respondent

- and -

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PART I—OVERVIEW

1. In 2019, the British Columbia Human Rights Tribunal found that “transgender people often find their very existence the subject of public debate and condemnation”, that “[t]heir lives are marked by disadvantage, prejudice, stereotyping, and vulnerability”, and that, “[f]or transgender children, anti-trans bullying leads to higher rates of absenteeism and poorer educational outcomes, which then has ripple effects for their health and future prospects”.¹

2. Amid these realities, the respondent — an elected school trustee — wrote on Facebook (among other things):

At the risk of being labeled a bigoted homophobe, I have to say that I support traditional family values and I agree ... that allowing little children [to] choose to change gender is nothing short of child abuse.²

3. The appellant forcefully denounced these and other statements made by the respondent. In doing so, he engaged in “counter-speech”.³ The chambers judge found that the appellant’s counter-speech had the purpose of “promot[ing] ... schools that were safe and inclusionary for transgender people”.⁴ For this counter-speech, the respondent sued the appellant for defamation.

4. In this appeal, this context should remain in the foreground. Counter-speech that has the purpose of promoting the dignity and equality interests of members of a vulnerable group — in this case, trans youth — should enjoy robust protection under British Columbia’s *Protection of Public Participation Act* (the “*PPPA*” or the “*Act*”) and other “anti-SLAPP” legislation.

5. Strong anti-SLAPP protection for dignity- and equality-protective counter-speech is necessary because debate concerning the inclusion of 2SLGBTQI individuals is a regrettably persistent feature of political discourse in Canada.⁵ Trans youth are particularly vulnerable. They face disproportionate rates of physical and verbal harassment, and are more likely to be street-

¹ *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 [*Oger*], ¶¶61-62 (emphasis added).

² *Neufeld v. Hansman*, 2019 BCSC 2028 [*Neufeld*], ¶¶8, 18.

³ **See:** C. F. Zwibel, “*Reconciling Rights: The Whatcott Case as Missed Opportunity*” (2013), 63 *Supreme Court Law Review* 313, at pp. 332-333.

⁴ *Neufeld* (B.C. S.C., 2019), *supra* note 2, ¶141.

⁵ **See:** K. Vance-Mubanga & E. McHarge, *Egale Canada’s Input To Inform the Thematic Report: Gender, Sexual Orientation and Gender Identity* (2021), at p. 6.

involved and to experience suicidality.⁶ They often, and increasingly,⁷ see their identities politicized and pathologized and even their very existence denied by demeaning rhetoric.⁸ Anti-SLAPP legislation should protect counter-speech that responds to such invective.

6. Specifically, courts should be attentive to the importance of protecting counter-speech like the appellant's at two stages of the anti-SLAPP analysis: (i) when considering whether there are grounds to believe that a defence of fair comment has "no real prospect of success"⁹ under s. 4(2)(a)(ii) of the Act;¹⁰ and (ii) when evaluating "the public interest in protecting" the counter-speech under s. 4(2)(b) of the Act.¹¹

7. Egale Canada intervenes to propose a values-based approach to assessing expression's content and context for the purpose of an anti-SLAPP application like the appellant's. Egale's proposed approach would help to ensure appropriately robust anti-SLAPP protection for counter-speech. Egale makes three submissions in this regard.

8. **First**, this Court should recognize for the first time that the protection of trans individuals' dignity and equality is among the values that underlie the *Charter*, and in particular s. 15(1).

9. **Second**, protective counter-speech should generally constitute fair comment. There should thus rarely be grounds to believe under s. 4(2)(a)(ii) of the *PPPA* that an anti-SLAPP applicant has no fair comment defence when they are sued for protective counter-speech.

⁶ **See:** T. Peter et al., "[Still in Every Class in Every School: Final Report on the Second Climate Survey on Homophobia, Biphobia, and Transphobia in Canadian Schools](#)" (2021), at pp. 51-65; O. Ferlatte et al., "[2SLGBTQI Suicide Prevention Research in Canada: Evidence, Gaps, and Priorities](#)" (2021), at pp. 8-10; Egale Canada, "[Not Under My Roof: Homeless LGBTQ Youth in Toronto](#)" (2012), at pp. 7-9.

⁷ **See:** A. H. Johnson, "[Tipping Points and Shifting Expectations: The Promise of Applies Trans Studies for Building Structural Competency](#)" (2022), 1:1-2 *Bulletin of Applied Transgender Studies* 163 [**Tipping Points**], at pp. 164-165; G. E. Tustin III, "[To Live More and Die Less: Challenging Tennessee's Anti-Trans Birth Certificate Policy](#)" (2021), 9:1 *Lincoln Mem'l U. L. Rev.* 187. [**To Live**], at pp. 199-200.

⁸ **See:** *T.A. v Manitoba (Justice)*, 2019 MBHR 12 [**T.A.**], ¶¶24-26; *Oger* (B.C. H.R.T., 2019), *supra* note 1, ¶¶60-71. **Cf.:** Respondent's Factum, ¶16.

⁹ *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 [**Pointes**], ¶60.

¹⁰ *Protection of Public Participation Act*, S.B.C. 2019, c. 3 [**PPPA**], s. 4(2)(a)(ii).

¹¹ *PPPA*, s. 4(2)(b).

10. **Third**, there is a weighty public interest in protecting expression that promotes the dignity and equality interests of members of vulnerable groups. This is particularly so when the expression consists of counter-speech in the political or electoral arena. To ensure that such expression receives adequate protection under anti-SLAPP legislation, courts should look to the core values underlying the *Charter* — not only values underlying the freedom of expression — to guide the public interest weighing exercise under s. 4(2)(b) of the *PPPA*.

PART II—STATEMENT OF ARGUMENT

A. The *Charter* protects the dignity and equality interests of trans individuals

11. This appeal arises out of expression that implicates the dignity and equality interests of trans individuals. The Court should recognize that trans individuals are “a group protected under s. 15 of the *Charter*”.¹² As elaborated below, this helps to explain why expression that advances trans individuals’ equality and dignity interests should generally constitute fair comment, and also why there is a weighty public interest in protecting such expression under s. 4(2)(b) of the *PPPA*.

12. Courts have held, correctly, that “gender identity” is an analogous ground under s. 15 of the *Charter*.¹³ This Court has reached the same conclusion with respect to other 2SLGBTQI communities, on the basis that their members’ identities are “unchangeable or changeable only at unacceptable personal costs”.¹⁴ Human rights tribunals have consistently found that trans individuals face extensive discrimination and are a particularly vulnerable community.¹⁵ Since 2017, human rights legislation in every Canadian jurisdiction has protected against discrimination on the basis of gender identity or gender expression.¹⁶ This Court should now recognize that trans individuals’ equality and dignity interests are protected under s. 15 of the *Charter*.

¹² *Pointes* (S.C.C., 2020), *supra* note 9, ¶180.

¹³ *Centre for Gender Advocacy c. Attorney General of Quebec*, 2021 QCCS 191, ¶111; *C.F. v. Alberta (Vital Statistics)*, 2014 ABQB 237, ¶¶58-60.

¹⁴ *Egan v. Canada*, [1995] 2 S.C.R. 513 [*Egan*], at p. 528. **See also:** *Vriend v. Alberta*, [1998] 1 S.C.R. 493 [*Vriend*], ¶90.

¹⁵ **See, e.g.:** *X.Y. v. Ontario (Government and Consumer Services)*, 2012 HRTO 726, ¶164; *T.A.* (Man. H.R.B.A., 2019), *supra* note 8, ¶¶24-26; *Oger* (B.C. H.R.T., 2019), *supra* note 1, ¶¶60-71.

¹⁶ **See, e.g.:** *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 2; *Human Rights Code*, R.S.B.C. 1996, c. 210, s. 7(1); *Human Rights Code*, R.S.O. 1990, c. H.19, s. 1.

B. Counter-speech that protects the dignity and equality of vulnerable individuals should generally constitute “fair comment”

13. For vulnerable groups counter-speech is an indispensable corrective to degrading and dehumanizing expression by others.¹⁷ Never is such protective counter-speech more essential than in response to comments that groundlessly and offensively associate 2SLGBTQI people with child abuse; as this Court recognized in *Whatcott*, such commentary exposes 2SLGBTQI people to hatred, vilification, and detestation.¹⁸ And, as the politicization of trans lives has intensified,¹⁹ no vulnerable group has been more in need of rigorous, protective counter-speech than trans youth.²⁰

14. The *PPPA*, like other anti-SLAPP legislation, has the purpose of protecting such counter-speech. As British Columbia’s Attorney General stated in the legislature, the *PPPA* “is intended to protect ... public participation in the debates of the issues of the day”, which may be “rigorous”, “heated”, and which may result in “intemperate comments”.²¹ Counter-speech, particularly when it responds to demeaning or dehumanizing comments or other invective about members of a vulnerable group, fits the bill.

15. When such protective counter-speech becomes the subject of a defamation action, the defence of fair comment should generally protect the counter-speech. This flows from: (i) the nature of counter-speech; and (ii) the role of “*Charter* values” — not only the values underlying the freedom of expression, but also the values underlying the right to equality guaranteed in s. 15(1) — in the evolution of the common law of defamation.

¹⁷ See, e.g.: *Mondal v. Evans-Bitten*, 2022 ONSC 809, ¶40; *Boissoin v. Lund*, 2009 ABQB 592, ¶95, aff’d, 2012 ABCA 300; *Canadian Jewish Congress v. North Shore News and Collins*, 1997 BCHRT 35, ¶209.

¹⁸ *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, ¶¶45, 189-190.

¹⁹ See: *Tipping Points*, *supra* note 7, at pp. 164-165; *To Live*, *supra* note 7, at pp. 199-200.

²⁰ See: *T.A.* (Man. H.R.B.A., 2019), *supra* note 8, ¶¶24-26; *Oger* (B.C. H.R.T., 2019), *supra* note 1, ¶¶60-71.

²¹ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl., 4th Sess., No. 198 (February 14, 2019) at 7018 (Hon. David Eby), quoted in *Neufeld v. Hansman*, 2021 BCCA 222, ¶3, and *Hobbs v. Warner*, 2021 BCCA 290, ¶10. See also: *Grant v. Torstar Corp.*, 2009 SCC 61 [*Grant*], ¶52.

i. Counter-speech is archetypal fair comment

16. To constitute fair comment at common law, a statement must, among other things, “be based on fact”, “be recognisable as comment”, and “satisfy the following objective test: could any [person] honestly express that opinion on the proved facts?”²² Counter-speech that aims to promote the dignity and equality of vulnerable individuals tends, by its nature, to satisfy these criteria.

17. It follows that, where an anti-SLAPP application has been brought by a defendant that has been sued in defamation for protective counter-speech, the anti-SLAPP application should rarely fail because “there are grounds to believe” that there is “no real prospect”²³ that the defendant will make out any of the “based on fact”, “recognisable as comment”, or “honest belief” requirements of the fair comment defence.

1. The “based on fact” requirement

18. Fair comment “must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made”.²⁴ It need not state these facts “exhaustively or in detail”,²⁵ and “[f]acts that are in the public arena, that have gained public notoriety so as to become matters of common knowledge do not have to be stated so long as they are clearly identified”.²⁶ The purpose of this requirement is to ensure that readers or listeners “are able to make up their own minds on the merits” of the allegedly defamatory statement.²⁷

19. Where the allegedly defamatory statements constitute counter-speech, the requisite “factual substratum”²⁸ should generally be the statements to which the counter-speech responds. This reflects this Court’s approach in *WIC Radio*, in which “the **general facts** giving rise to the dispute between [the defendant] and [the plaintiff] provide[d] a sufficient launching pad for

²² *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 [**WIC Radio**], ¶28, quoting R. E. Brown, *The Law of Defamation in Canada*, vol. 2, 2nd ed., at pp. 15-36.

²³ *Pointes* (S.C.C., 2020), *supra* note 9, ¶60. See: *PPPA*, s. 4(2)(a)(ii).

²⁴ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶31.

²⁵ *Volpe v. Wong-Tam*, 2022 ONSC 3106 [**Volpe**], ¶225.

²⁶ *Ross v. Beutel*, 2001 NBCA 62, ¶65.

²⁷ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶31. See also: *Reynolds v. Times Newspapers Ltd.*, [2001] 2 A.C. 127 (H.L.), p. 201, per Lord Nicholls of Birkenhead; *Channel Seven Adelaide Pty Ltd. v. Manock*, [2007] HCA 60 [**Channel Seven**], ¶5, per Gleeson C.J., and ¶47, per Gummow, Hayne, and Heydon JJ.

²⁸ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶59.

the defence of fair comment”,²⁹ and “the contents or tone of [the plaintiff’s] *speeches*” were “sufficient ... to anchor the defamatory comment”.³⁰ There is no requirement that the comment be “*supported* by the facts”;³¹ such a requirement would collapse the distinction between the defences of fair comment and justification.³² As the Ontario Superior Court of Justice recently stated in *Volpe*, a case involving allegedly defamatory counter-speech:

The issue before the court on this anti-SLAPP motion is *not whether the plaintiffs are homophobic, transphobic, or anti-LGBTQ2S+*. The issue under the fair comment defence is whether it weighs more in favour of the plaintiffs that *the comments* by [the individual plaintiff] *could not provide a basis in fact* for the Impugned Statements.³³

20. Particularly when counter-speech arises during debate concerning controversial subject matter, it is appropriate to focus on the fact of the responded-to comments in applying the “based on fact” requirement of the fair comment defence. This is because, as the Ontario courts have recently (and correctly) held, “one cannot express strongly-held and harshly articulated political views without expecting to get back more of the same”, and “when a person injects themselves into public debate over a contentious topic, they must expect that they are going to be met with some measure of rebuttal, perhaps forceful rebuttal, by those who take an opposite view”.³⁴

21. This is especially true of comments that disparage members of vulnerable groups; such comments themselves provide a sufficient factual basis for vigorous counter-speech. As the appellant himself noted in his Facebook post, he knowingly made his comments “[a]t the risk of being labeled a bigoted homophobe”.³⁵

2. The “recognisable as comment” and “honest belief” requirements

22. Counter-speech that promotes the dignity and equality of vulnerable individuals should also generally satisfy the “recognisable as comment” and “honest belief” requirements of the fair

²⁹ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶34 (emphasis added).

³⁰ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶59 (emphasis added).

³¹ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶39 (emphasis added).

³² **See:** *DeKoter v McLeod*, 2019 ABCA 163, ¶25.

³³ *Volpe* (Ont. S.C., 2022), *supra* note 25, ¶249 (and ¶262) (emphasis added).

³⁴ *Mondal v. Evans-Bitten*, 2022 ONSC 809 [*Mondal*], ¶35, quoting *Levant v. DeMelle*, 2022 ONCA 79, ¶70.

³⁵ *Neufeld* (B.C. S.C., 2019), *supra* note 2, ¶18.

comment defence. This is equally true when the allegedly defamatory counter-speech characterizes the statement to which it responds — or the individual who made that statement — as “homophobic, transphobic, or anti-LGBTQ2S+” or otherwise “prejudiced”.³⁶ As the Ontario Superior Court of Justice has stated, “loose, figurative or hyperbolic language of this nature is often commentary dressed in the form of factual statement”.³⁷ This is why, as Binnie J. put it in *WIC Radio*, “[t]he cases establish that the notion of ‘comment’ is generously interpreted”.³⁸

23. Nowhere should these principles apply more forcefully than when the impugned expression is protective counter-speech. Such expression will tend to characterize the statement (or the statement-maker) to which the counter-speech responds as being “against” the vulnerable group that is the subject of the exchange: in other words, an “anti-” or a “-phobic”. Though framed factually, such protective counter-speech should generally be recognisable as comment.

24. Similarly, the “honest belief” requirement “is not a high threshold for ... defendants to meet”,³⁹ particularly when the impugned expression is counter-speech that promotes the dignity and equality of vulnerable group members. The test, as this Court held in *WIC Radio*, is whether “*any* [person] [could] honestly express th[e] opinion on the proved facts”, “however prejudiced he may be, however exaggerated or obstinate his views”.⁴⁰ As discussed above, where “th[e] opinion” is counter-speech, “the proved facts” are the statements to which the counter-speech responds. It follows that, when a defamation plaintiff has made statements that convey hostility to the dignity and equality of 2SLGBTQI people, the “honest belief” requirement will likely be satisfied, as it should generally be the case that “[a] person reading the [derogatory statements] could reach the conclusion that the plaintiffs were homophobic, transphobic, and anti-LGBTQ2S+”.⁴¹

³⁶ *Volpe* (Ont. S.C., 2022), *supra* note 25, ¶232; *Awan v. Levant*, 2016 ONCA 970 [*Awan*], ¶84. **See also:** *Shavluk v. Green Party of Canada*, 2010 BCSC 804, ¶¶71-72, *aff’d* 2011 BCCA 286; *Bernier v. Kinsella*, 2021 ONSC 7451 [*Bernier*], ¶25.

³⁷ *Mondal* (Ont. S.C., 2022), *supra* note 34, ¶34, quoting *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶26 (quotation marks omitted).

³⁸ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶30.

³⁹ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶50.

⁴⁰ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶40 (and ¶49, 62) (emphasis added; original emphasis omitted), quoting *Cherneskey v. Armadale Publishers Ltd.*, [1979] 1 S.C.R. 1067, at pp. 1100, 1103, per Dickson J. (dissenting). **See also:** *Channel Seven* (H.C.A., 2007), *supra* note 27, ¶3, per Gleeson C.J.

⁴¹ *Volpe* (Ont. S.C., 2022), *supra* note 25, ¶267.

ii. **Protecting counter-speech as fair comment is consistent with *Charter* values**

25. As this Court recognized in *WIC Radio*, “the evolution of the common law is to be informed and guided by *Charter* values”.⁴² The defence of fair comment “helps hold the balance in the law of defamation” between two such values, namely, “the freedom of expression and debate” and “the worth and dignity of each individual, including reputation”,⁴³ and “[t]he Court’s task is not to prefer one over the other by ordering a ‘hierarchy’ of rights ..., but to attempt a reconciliation”.⁴⁴

26. With protective counter-speech, the fair comment defence may at once advance the values underlying the freedom of expression and the *Charter* value of individual dignity and worth. The latter is guaranteed in s. 15(1), which protects individuals’ interest in the recognition of their “intrinsic worthiness ... regardless of [their] ... characteristics”.⁴⁵

27. Expression that demeans and dehumanizes members of a vulnerable group — particularly by public officials — deny those individuals the “sense of dignity and worthiness” to which s. 15(1) of the *Charter* entitles them.⁴⁶ Counter-speech that responds to such comments warrants careful protection, not only in accordance with the values underlying the freedom of expression, but also to safeguard the dignity and equality interests that s. 15(1) of the *Charter* guarantees.

28. Courts should approach the defence of fair comment accordingly — and expansively — when a defendant invokes the defence against a defamation claim arising from dignity- and equality-protective counter-speech. The defence of fair comment is, after all, “broad in scope and does not create a high threshold”.⁴⁷ Especially in an anti-SLAPP application, brought in response to a defamation action by a public official who takes exception to dignity- and equality-protective counter-speech, the defence should generally have a real prospect of success.⁴⁸

⁴² *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶2.

⁴³ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶¶1-2.

⁴⁴ *WIC Radio* (S.C.C., 2008), *supra* note 22, ¶2 (citation omitted).

⁴⁵ *Vriend* (S.C.C., 1998), *supra* note 14, ¶67 (and ¶¶68-69). **See also:** *Egan* (S.C.C., 1995), *supra* note 14, at p. 543.

⁴⁶ **See:** *Vriend* (S.C.C., 1998), *supra* note 14, ¶67.

⁴⁷ *Senft v. Vigneau*, 2020 YKCA 8, ¶81, leave to appeal ref’d, [2020 CanLII 68953](#) (S.C.C.).

⁴⁸ **See, e.g.:** *Awan* (Ont. C.A., 2016), *supra* note 36, ¶84.

C. Charter values should inform the “public interest in protecting” expression

29. In *Pointes*, this Court offered guidance on how courts are to weigh “the public interest in protecting the underlying expression” under statutory provisions like s. 4(2)(b) of the *PPPA*. Among other factors, courts should assess “the *quality* of the expression”.⁴⁹ An assessment of expression’s “quality” should consider the expression’s content and its context: what has been expressed, where, and when. The Court said as much in *Pointes* when it identified “the importance of the expression” and “the possibility that the expression or the claim might provoke hostility against an identifiably vulnerable group or a group protected under s. 15 of the *Charter* or human rights legislation” as “factors that may bear on the public interest weighing exercise”.⁵⁰

30. The *Charter* should be a primary source for the criteria by which to assess whether, and the extent to which, protecting particular expression is in the “public interest”.⁵¹ *Pointes* makes clear that “the core values underlying freedom of expression”, as identified in “this Court’s s. 2(b) [*Charter*] jurisprudence”, should guide this assessment.⁵² The Court should now confirm that the value of promoting dignity and equality, which underlies s. 15(1) of the *Charter*, may similarly inform the assessment of the “public interest in protecting” expression.

31. *Pointes* teaches that there is scant public interest in protecting expression that “might provoke hostility against an identifiably vulnerable group”,⁵³ such as trans youth. There is a correspondingly high public interest in protecting counter-speech that responds to such expression and that thereby promotes the equality and dignity interests — as guaranteed in s. 15(1) of the *Charter* — of members of that vulnerable group. Courts should consider whether a defendant’s expression may be so described in weighing the public interest under s. 4(2)(b) of the *PPPA*.

32. This Court should also recognize an especially weighty public interest in protecting political or electoral counter-speech. Such expression warrants scrupulous protection under s. 2(b)

⁴⁹ *Pointes* (S.C.C., 2020), *supra* note 9, ¶74 (original emphasis); **See also:** *Levant v. Day*, 2019 ONCA 244, ¶22-23, leave to SCC denied, [2019 CanLII 101530](#) (S.C.C.).

⁵⁰ *Pointes* (S.C.C., 2020), *supra* note 9, ¶80.

⁵¹ **See:** *R. v. Zundel*, [1992] 2 S.C.R. 731, at p. 806, per Cory and Iacobucci JJ. (dissenting).

⁵² *Pointes* (S.C.C., 2020), *supra* note 9, ¶77.

⁵³ *Pointes* (S.C.C., 2020), *supra* note 9, ¶80. **See also:** *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, ¶20.

of the *Charter*.⁵⁴ The law properly accords “a very high level of public importance ... to protecting the ability of members of the public to demonstrate or to call public attention to aspects of the candidacy of an individual running for public office”.⁵⁵ This is why, for individuals in political office, recourse to the law of defamation should be exceptional; rather, their primary resort is to “protect [] their reputations through the political process to respond to criticisms”.⁵⁶

33. When a public official or election candidate has made comments that denigrate members of a vulnerable group, counter-speech that rebuts those comments not only constitutes political expression but also advances *Charter* values of promoting dignity and equality. Such counter-speech, however forceful, is “precisely the kind of discourse and discussion that [anti-SLAPP] legislation is designed to protect” against an attempt to silence it through a defamation suit.⁵⁷

34. The same cannot be said for demeaning or disparaging comments to which counter-speech responds. An anti-SLAPP application should not be denied – and anti-2SLGBTQI invective should not be shielded from forceful rebuke – out of concern for a “potential chilling effect on future expression”⁵⁸ when that “future expression” would be contrary to the dignity- and equality-interests of 2SLGBTQI people. The public interest in safeguarding protective counter-speech from SLAPP suits should be dispositively weightier under s. 4(2)(b) of the *PPPA*.

PART III—SUBMISSIONS CONCERNING COSTS

35. Egale does not seek costs and requests that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of July, 2022.



Adam Goldenberg / Solomon McKenzie

⁵⁴ **See:** *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569, ¶60. **See also:** *Harper v. Canada (Attorney General)*, 2004 SCC 33, ¶66 (and ¶11, per McLachlin C.J. and Major J. (dissenting, but not on this point)); *R. v. Guignard*, 2002 SCC 14, ¶20.

⁵⁵ *Able Translations Ltd. v Express International Translations Inc.*, 2016 ONSC 6785, ¶97.

⁵⁶ *McLaughlin v. Mynard*, 2017 ONSC 6820, ¶76, quoting *Montague (Township) v. Page*, [2006] CarswellOnt 451 (Ont. S.C.), ¶29.

⁵⁷ *Bernier* (Ont. S.C., 2021), *supra* note 36, ¶52.

⁵⁸ *Neufeld* (B.C. C.A., 2021), *supra* note 21, ¶65.

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