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

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

BETWEEN:

Jessica Yaniv

**COMPLAINANT**

AND:

Various Waxing Salons  
(Blue Heaven Beauty Lounge and Sandeep Benipal, Suhki Hehar and Sukhi Beauty Dream Salon,  
Marcia DaSilva, Hina Moin, Pam Dulay, Judy Tran and Merle Norman)

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member:

Devyn Cousineau

On her own behalf:

Jessica Yaniv

Counsel for Blue Heaven Beauty Lounge and  
Sandeep Benipal, Suhki Hehar and Sukhi  
Beauty Dream Salon, and Marcia DaSilva:

Jay Cameron and Brandon Langhelm

On behalf of Hina Moin, Pam Dulay, Judy  
Tran and Merle Norman:

No one appearing

Dates of hearings:

Blue Heaven Beauty Lounge and  
Sandeep Benipal:

July 4, 2019

Sukhdip Hehar and Sukhi Dream  
Salon:

July 5, 2019

Judy Tran:

July 16, 2019

Marcia DaSilva:

July 17, 2019

Hina Moin, Pam Dulay and Merle  
Norman:

July 26, 2019

Location of hearings:

Vancouver, BC

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## I INTRODUCTION

[1] Jessica Yaniv is a transgender woman. All of the Respondents operate businesses which offer waxing services. Ms. Yaniv requested waxing services from each of the Respondents. In five cases, she requested waxing of her scrotum. In two, she requested waxing of her arms or legs. In each case, she told the Respondent that she was a transgender woman and the Respondent refused to provide Ms. Yaniv with service. Ms. Yaniv says that this refusal to serve her is discrimination on the basis of her gender identity and expression, in violation of s. 8 of the *Human Rights Code* [**Code**].

[2] With one exception, all of the Respondents are women who advertised their services through Facebook Marketplace. They were either providing the service out of their home, or in the client’s home. Most of them presented as racialized, with English not their first language. Only three Respondents presented a defence to Ms. Yaniv’s complaints. These characteristics are significant because they support my conclusion that Ms. Yaniv has engaged in a pattern of filing human rights complaints which target small businesses for personal financial gain and/or to punish certain ethnic groups which she perceives as hostile to the rights of LGBTQ+ people.

[3] In this decision, I analyse Ms. Yaniv’s complaints in two categories: genital waxing cases and cases involving arm and leg waxing. In the genital waxing cases, I find that scrotum waxing was not a service customarily provided by the Respondents. As such, they did not deny Ms. Yaniv a service and did not discriminate against her. I dismiss these complaints under s. 37(1) of

the *Code*. In the leg and arm waxing cases, I find that Ms. Yaniv filed the complaints for improper purposes. I dismiss these complaints under s. 27(1)(e) of the *Code*.

[4] The three Respondents which presented a defence were all represented by Jay Cameron and Brandon Langhelm of the Justice Centre for Constitutional Freedoms [JCCF]. Ms. Yaniv has applied for an order of costs against these Respondents arising out of conduct which she attributes to Mr. Cameron and the JCCF. She also applies for costs specifically against the Respondent Sukhdip Hehar. I dismiss all of Ms. Yaniv's applications for costs. I do, however, find that Ms. Yaniv has engaged in improper conduct during the course of this complaint. I order her to pay the represented Respondents \$2,000 each.

## II OVERVIEW OF PARTIES AND PROCESS

[5] This decision concerns seven complaints brought by Ms. Yaniv. The complaints were consolidated by the Tribunal, under s. 21(6) of the *Code*, because of the overlap in subject matter, which raises common issues of fact and law that have been most efficiently addressed through a single process. At early stages of the process, Ms. Yaniv's identity was protected by a publication ban and she was identified by the Tribunal simply as "JY". I lifted that ban during the course of these hearings: *Yaniv v. Various Waxing Salons*, 2019 BCHRT 147 [**Publication Ban Decision**].

[6] In three cases, the Respondents filed a response and presented a defence at a hearing:

- a. **Blue Heaven Beauty Lounge and Sandeep Benipal:** Ms. Benipal is a Sikh woman who runs her business, Blue Heaven Beauty Lounge, out of a small room in her home. She refused to provide Ms. Yaniv with waxing of her scrotum.
- b. **Marcia DaSilva:** Ms. DaSilva is a Brazilian woman who performs beauty services out of her home. She refused to provide Ms. Yaniv with waxing of her scrotum.
- c. **Sukhi Beauty Dream Salon and Sukhdip Hehar:** Mrs. Hehar is a Sikh woman who provides mobile beauty services in the homes of her clients through her

business, Sukhi Beauty Dream Salon. Before opening her business, she reached an agreement with her husband that she would not perform services on any “male” body for religious and cultural reasons. She interprets a male body to mean a body with a penis and scrotum, which would include Ms. Yaniv. She refused to provide Ms. Yaniv with leg and arm waxing.

All of these Respondents are represented by the JCCF. Together, I will refer to them as the **Represented Respondents**.

[7] The following Respondents did not file a response, attend the hearing, or otherwise participate in this process:

- a. **Judy Tran:** Ms. Tran provides beauty services out of her home. She refused to provide Ms. Yaniv with waxing of her scrotum.
- b. **Pam Dulay:** Ms. Dulay refused to provide Ms. Yaniv with waxing of her scrotum.
- c. **Merle Norman Metrotown:** Merle Norman was a business operating out of Metrotown Mall in Vancouver. It has since closed down. It refused to provide Ms. Yaniv with waxing of her scrotum.
- d. **Hina Moin:** Ms. Moin provides beauty services out of her home. She refused to provide Ms. Yaniv with a leg wax.

Together, I refer to these Respondents as the **Unrepresented Respondents**.

[8] Each complaint was scheduled for a separate one-day hearing.<sup>1</sup> Because of the overlap in subject matter, I must be clear at the outset about how evidence from each hearing is used in my decision.

[9] I have used evidence and arguments submitted in the hearings against the Represented Respondents in relation to all of Ms. Yaniv’s complaints. Ms. Yaniv and the Represented

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<sup>1</sup> I later re-scheduled the hearings against Pam Dulay, Hina Moin and Merle Norman for hearing on a single day.

Respondents consented to this approach. It has allowed the Tribunal and parties to avoid duplicating evidence and resources in circumstances where all of the Represented Respondents were represented by the same counsel. It meant, for example, that the expert evidence submitted in the first hearing did not need to be repeated in the second and third – rather, it was admitted for the purpose of all three. In relation to the complaints against the Unrepresented Respondents, there is no unfairness in considering this evidence because Ms. Yaniv was present in all the hearings and the Unrepresented Respondents were not participating in the hearing or complaint process.

[10] In contrast, I have only used evidence from the hearings against the Unrepresented Respondents to resolve those particular complaints. This is because the Represented Respondents, who are participating in this process, were not present in those hearings and would not have the chance to fairly respond to any evidence or arguments put before me in their absence.

[11] Overall, this approach has allowed me to fairly and efficiently make consistent findings in all of the complaints.

### **III ISSUES**

[12] Section 8(1) of the *Code* prohibits service providers from denying service to a person on the basis of their gender identity or expression, except if they have a *bona fide* and reasonable justification for doing so. The analysis proceeds in two parts. First, the burden is on Ms. Yaniv to establish that each Respondent denied her a service which they customarily provided to the public, and that her gender identity was a factor in that denial: *Moore v. BC (Education)*, 2012 SCC 61 at para. 33. If she does so, the burden shifts to the Respondent to establish that the denial was *bona fide* and reasonably justified. If it is justified, there is no discrimination. This is the analysis that I apply to Ms. Yaniv's genital waxing complaints.

[13] The Represented Respondents argue that a decision by this Tribunal finding discrimination implicates their rights and the values conferred by the *Charter of Rights and*

*Freedoms [Charter]*. They specifically invoke the rights of freedom of religion and security of the person, and Canada’s commitment to multiculturalism: *Charter*, ss. 2(a), 7, and 27. I accept that, where a complaint engages *Charter* protections, the Tribunal is bound to render a decision that gives effect to those protections as fully as possible within its mandate: *Trinity Western University v. Law Society of BC*, 2018 SCC 32; *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 [**Oger (No. 7)**] at paras. 55-56. However, given my findings, this decision does not engage or impact the Respondents’ rights under the *Charter*. I have, therefore, not found it necessary to engage in this exercise.

[14] Finally, these cases raise the issue of Ms. Yaniv’s motives in filing the complaints. In that regard, s. 27(1)(e) of the *Code* grants the Tribunal discretion to dismiss complaints that are filed for improper purposes or in bad faith. I return to the principles underlying this discretion below, in my consideration of Ms. Yaniv’s leg and arm waxing complaints.

#### **IV CREDIBILITY**

[15] For the most part, the facts of these complaints are laid out in Facebook communications or, in the case of Merle Norman, in a recorded telephone conversation. They are, therefore, not fundamentally in dispute. Where it is necessary to resolve an issue based on a witness’s credibility, I do so in accordance with the principles laid out in *Bradshaw v. Stenner*, 2010 BCSC 1398, and explain my reasons below.

[16] Generally speaking, on the limited issues where Ms. Yaniv’s testimony conflicted with another witness, I have preferred the other witness’s version of events. As I will explain, I found aspects of Ms. Yaniv’s testimony to be disingenuous and self-serving. In cross-examination, she was evasive and argumentative, and contradicted herself. As one example, in her complaint against Mrs. Hehar, Ms. Yaniv originally testified that she could see from their communications that Mrs. Hehar had an “English deficiency” and so she used simple language to explain her gender identity. Later, under cross-examination, counsel asked her:



Q: ... You could see that Ms. Hehar Gill is somebody who has somewhat less than a perfect use of the English language, correct?

Yaniv: No, that's not correct...

Q: You can see that the usage of the English language is not perfect from the conversation. [reviews some examples] ... So would you agree with me that it was apparent that her understanding or her ability to use the English language was at somewhat less than a fluent level?

Yaniv: Absolutely not. And the reason being is Messenger is considered instant communication. When you go and you text somebody, Mr. Cameron, I'm pretty sure you don't use full grammar and punctuation. You try to make the communication quick and easy. So no...

Q: You're not willing to give the Respondent the benefit of the doubt that maybe she has less than perfect understanding of the English language?

Yaniv: No... She was more than capable of writing... so my belief is that Ms. Sukhi Hehar Gill has full understanding of the English language. ... She is very capable in the English language...

[17] As I will explain, Ms. Yaniv's credibility has also impacted my decision to dismiss two of her complaints on the basis that they were brought for an improper purpose.

## **V GENITAL WAXING COMPLAINTS**

[18] This portion of my decision addresses Ms. Yaniv's complaints against Blue Heaven Beauty Lounge and Ms. Benipal, Ms. DaSilva, Ms. Tran, Ms. Dulay, and Merle Norman. In each of these cases, the Respondents advertised the service of "brazilian waxing", and it was this service which Ms. Yaniv attempted to book. These cases raise two common issues at the outset: (1) what service was Ms. Yaniv requesting, and (2) does this service constitute a brazilian wax, such that it is one the Respondents were customarily providing to the public.

[19] In this section, I address each of these issues in turn, and then go on to apply my findings to each individual complaint.

## A. The service Ms. Yaniv was requesting

[20] Ms. Yaniv does not dispute that she was requesting that these Respondents wax her genitals. In this unique context, her genitals were therefore relevant to her complaints – specifically to the question of whether the Respondents customarily provided the type of genital waxing that she was requesting. Throughout the hearing, however, Ms. Yaniv refused to answer questions about her genitals and argued that such questions were inappropriate. Given her representation to various Respondents that she had “male parts”, has not “gone through surgery”, and “was born a man now I’m a woman”, the hearings initially proceeded on the understanding that she has a penis and scrotum, and that she was therefore requesting waxing of the scrotum. However, under cross examination she was evasive on the issue, referring to “whatever is down there”. In the Blue Heaven hearing on July 4, she insinuated that she may be intersex but refused to say whether she was. Asked to explain what she meant when she told Ms. Benipal she had “male parts”, she testified simply “I mean male parts”.

[21] On July 17, in the hearing against Ms. DaSilva, Ms. Yaniv testified that she had “male genitals”. Moments later, she testified, for the first time, that she is intersex. She said again that she had “male parts” and then added that she had “other stuff”, though she initially refused to say whether that included a vulva. She denied, for the first time, that she had asked Ms. DaSilva to wax a scrotum. Ms. Yaniv refused to answer questions put to her by Ms. DaSilva’s counsel, and so I intervened:

Tribunal: Ms. Yaniv, it’s relevant to this complaint. ... The question is, what were you asking Ms. DaSilva to wax?

Ms. Yaniv: I was asking for a female genital waxing wax .... A brazilian wax.

Tribunal: ... Forget brazilian, brozilian, male, female, whatever – what body part were you asking her to ask?

Ms. Yaniv: The genitals, the genital region.

Tribunal: Their defence hinges on a defence that they, that she, is not comfortable waxing a scrotum. So are you talking

about a scrotum, or are you talking about a vulva, or are you talking about both?

Ms. Yaniv: The second one.

Tribunal: Vulva?

Ms. Yaniv: Yes.

Tribunal: ... You're saying you were asking her to wax a vulva?

Ms. Yaniv: Yes. ... I'm not gonna say whether I have the whole thing. I'll say it exists.

At this point, Mr. Cameron asked Ms. Yaniv to submit to an independent medical examination to verify her genitals. I refused to make such an order, on the basis that it was unduly intrusive and disproportionate to the issues at stake.

[22] I am satisfied, based on Ms. Yaniv's representations to the Respondents that she has "male parts", "used to be a boy", and has not "gone through surgery yet", as well as her evidence in these hearings that she has "male parts", that Ms. Yaniv was seeking to have hair removed from a scrotum. Whether or not she may also have a vulva is not ultimately determinative of any issue in this complaint and so I do not need to engage further with that question.

## **B. Defining the service: brazilian waxing**

[23] Section 8 of the *Code* only applies to services which a person customarily provides to the public. Like all provisions of the *Code*, the meaning of "services" customarily provided to the public must be given a large and liberal interpretation: *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 31. To define the service too narrowly risks obscuring, and perpetuating, barriers which impede equal access to public life: *Moore* at paras. 27-31. At the same time, however, a service provider's human rights obligations are grounded in their obligation to provide their particular service without discrimination. The Represented Respondents put it this way: "A grocer is not required to service a bicycle".

[24] There is no dispute that all of these Respondents customarily provided brazilian waxes to the public. Given that agreement, I did not find Ms. Yaniv's reliance on *University of British Columbia v. Berg*, [1993] 2 SCR 353, to be helpful. *Berg* concerns the definition of "public", while the issue in these complaints is the definition of "service". Specifically, the dispute in these complaints concerns the definition of a brazilian wax, and whether it includes the waxing of a scrotum.

[25] Ms. Yaniv argues that a brazilian wax is the removal of hair between the belly button and the anus, regardless of the genitals involved. The Represented Respondents argued that a brazilian wax is a commonly understood industry term which refers to the removal of hair in this region of a person with a vulva. They distinguish it from a "brozilian" or "manzilian", which is the removal of all hair in this region from a person with a scrotum. Ms. Yaniv strongly objects to these terms on the basis that she is a woman and not a "bro" or a "man".

[26] The Represented Respondents called Angela Barnetson to give expert evidence about waxing services and the waxing industry. Ms. Barnetson has been a licenced aesthetician for 30 years. She teaches aesthetics at the Blanche Macdonald Centre in Vancouver, a college which provides training for various professions in the beauty industry. She has been teaching for 13 years. In addition, she owns and operates a spa, which provides waxing and other services for men only.

[27] Ms. Yaniv did not object to Ms. Barnetson being qualified as an expert until after all of these hearings were complete, and she filed her response to the costs application brought by the Represented Respondents. She speculates that Ms. Barnetson may not be who she says she is, and waxing may simply be her hobby or the subject of her "personal enthusiasm". This was not a proper way to raise the objection. Ms. Yaniv had the opportunity to cross examine Ms. Barnetson about her qualifications and elected not to. Rather, she questioned Ms. Barnetson about the subject matter of her expertise and later relied on those answers, for example to support her position that there is no sex or gender-based differences in waxing leg and arm hair.

[28] I find that Ms. Barnettson is qualified to give expert evidence about waxing techniques on different genitalia, and the waxing industry in general. She has “acquired special or peculiar knowledge” through 30 years of study and experience: *R v. Mohan*, [1994] 2 SCR 9. She is a recognized leader in her profession, as both a teacher and business owner. She gave her evidence in a fair, objective, and non-partisan manner, in accordance with the duty of an expert: *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23. I have found her evidence helpful in resolving the issue before me.

[29] After Ms. Barnettson testified, and after her hearings against the Represented Respondents were complete, Ms. Yaniv applied to introduce her own expert evidence in her hearings against Ms. Dulay, Merle Norman, and Ms. Moin. The application was necessary because Ms. Yaniv had not complied with the Tribunal’s rules governing expert evidence and, in particular, the requirement to give notice of expert evidence no later than 90 days before the start of hearing: Rule 21. The proposed subject matter of Ms. Yaniv’s expert evidence was the aesthetics industry and “in particular, what is a brazilian”.

[30] I denied Ms. Yaniv’s application in a letter dated July 24, 2019, reasoning:

In my view, what Ms. Yaniv is effectively seeking to do is to respond to the evidence presented by Blue Heaven, Ms. Hehar and Ms. DaSilva [together, **Represented Respondents**]. This is evident by the reason which Ms. Yaniv advances for adducing expert evidence, which is to “clarify incorrect facts in regards to the esthetics industry in particular, what is a brazilian”. This can only be a reference to evidence I have heard from the Represented Respondents. There is no suggestion, or reason to expect, that the Respondents in the Friday Hearing intend to lead evidence about what a brazilian is. I could not fairly use any new evidence against the Represented Respondents. In my view, to allow the proposed expert evidence at the Friday Hearing will prejudice the Represented Respondents.

After I issued this decision, Ms. Yaniv re-submitted her application to lead expert evidence and I issued a second denial in a letter dated July 25, 2019. Ms. Yaniv raised the issue a third time at the beginning of the hearings on July 26, and I again denied the application. Ms. Yaniv

attempted to give the proposed expert evidence herself during her testimony, but I have not given her opinion any weight because she is not an expert in the subject matter.

[31] In the result, I have relied on Ms. Barnetson's expert evidence to define a "brazilian wax". That evidence was supported by the testimony of the Represented Respondents about the scope of services they are trained to provide and intended to offer.

[32] There are differences between waxing the genitals of a person with a vulva and a person with a penis and scrotum. To remove hair from a scrotum, the practitioner is required to handle both the scrotum and penis for a prolonged period of time, from 20 minutes up to an hour depending on the amount of hair. The scrotum must be held and positioned in a particular way. The skin on the scrotum is very thin and the practitioner must exercise caution to ensure they do not rip it. If the procedure is not done properly, it can cause bleeding, torn skin, and bruising. In contrast, the waxing of a person with a vulva involves different body parts and different techniques for positioning, applying, and removing the wax. At the Blanche Macdonald College, students are only taught to remove hair from labia and not from a scrotum. Ms. Barnetson provides private training about the procedure of removing hair from a scrotum and says that proper training and practice is important to ensure it is done safely and properly.

[33] Ms. Barnetson testified that there are several reasons a person might not choose to wax the genitals of a person with a scrotum. The penis almost always become erect, at least for some portion of the treatment. In her experience, it is not uncommon for the client to then request or expect sexual services and to become abusive when they are denied. Some people – particularly women – are not comfortable working with the scrotum and penis. She says that it is common industry practice for certain businesses to restrict their services to "women" (meaning persons with a vulva) or "men" (meaning persons with a penis and scrotum).

[34] Critically for the purpose of this complaint, Ms. Barnetson testified that the service of removing the genital hair of a person with a scrotum is called a "brozilian" or "manzilian". This is contrasted from a "brazilian", which is an industry term understood to apply to the removal of genital hair from a person with a vulva.

[35] I understand Ms. Yaniv’s consternation at the terms “brozilian” and “manzilian”. As a transgender woman, it is hurtful to be required to request services labelled “bro” or “man”. Those terms undermine her identity as a woman and reinforce the pre-eminence that society gives to genitals as the ultimate determinant of gender. Notwithstanding this objection, however, these are the terms used in the industry to describe particular services offered by businesses. In seeking the removal of hair from her scrotum, most service providers would understand that Ms. Yaniv did not require a “brazilian wax”, but rather a “brozilian” or “manzilian”. Likewise, I accept that service providers advertising a “brazilian” wax are referring to the removal of genital hair from a person with a vulva. As I will explain, this is consistent with the testimony of the Represented Respondents, which was that they intended to only provide their services to “women” – a term they define to mean persons with a vulva.

[36] In the case of genital waxing, I find that the differences in procedures, as well as its intimate nature, are important to defining the service. First, a scrotum is different than a vulva – regardless of the gender of the person it is attached to. Given the difference in techniques, training, and physical body parts, it is not appropriate to lump both together under the broader rubric of “genital waxing”, or – as Ms. Yaniv argues – “genital waxing for women”. The job is different depending on the specific genitals involved. This distinguishes the service from arm and leg waxing, which I discuss below, or other personal care services such as hair cuts.

[37] Second, I accept that this is an intimate service that a person must actively and specifically consent to provide. It requires the service provider to handle a stranger’s genitals for a prolonged period of time, in a private setting. I do not accept that a person’s decision to touch a stranger’s vulva then requires them to also touch a stranger’s penis and scrotum.

[38] In her arguments, Ms. Yaniv attempted to draw parallels with other circumstances where LGBTQ+ persons have been denied services – for example, in connection with gay weddings. I do not find the circumstances analogous. There is no material difference in a cake which is baked for a straight wedding, and one that is baked for a gay wedding. Nor does baking a cake for a gay wedding require you to have intimate contact with the client. Taking another example, there is no material difference in renting a room to a gay couple or to a straight

couple, and renting out rooms does not require intimate contact with the client: see e.g. *Eadie and Thomas v. Riverbend Bed and Breakfast and others (No. 2)*, 2012 BCHRT 247 [**Eadie**].

[39] In contrast, in the case of genital waxing, I have found there is a material difference in waxing different types of genitals and that, because of its intimate nature, service providers must consent to provide service on a particular type of genitals. What the law requires is that, having chosen to provide a particular service, they must provide that service without discrimination. For example, a person who customarily waxes vulvas cannot discriminate amongst their clients with vulvas, and likewise for a person who customarily waxes scrotums. However, human rights legislation does not require a service provider to wax a type of genitals they are not trained for and have not consented to wax.

[40] In sum, I find that the term “brazilian wax” refers to the removal of genital hair from a person with a vulva. Removing hair from a scrotum does not fall within this service. This is largely dispositive of Ms. Yaniv’s genital waxing complaints because she has not persuaded me that waxing a scrotum was a service customarily provided by these Respondents.

[41] In the next sections, I set out the facts and my decisions in respect of each of Ms. Yaniv’s genital waxing complaints.

### **C. Blue Heaven Beauty Lounge and Sandeep Benipal**

[42] This hearing was held on July 4, 2019. Ms. Yaniv testified on her own behalf, as did Ms. Benipal. The Represented Respondents also called Ms. Barnettson to testify on this day.

[43] Ms. Benipal operates a salon business from a small room in her home. During business hours, she is alone in the home with her children. She testified that she runs this business to earn some extra money to support her children.

[44] Ms. Benipal offers her services only to women. She is originally from India, and she and her husband are Sikh. Ms. Benipal explains that, in their religion, it is not appropriate for her to touch a male body that is not her husband or her family member. She does not provide any aesthetic services to men, even less intimate services like hair cuts or facials. At the time that



Ms. Yaniv reached out to her, Ms. Benipal did not know what a transgender person was. Ms. Benipal counts a person as a “man” if they have a penis and scrotum.

[45] Ms. Benipal posted an advertisement on Facebook Marketplace for a “Brazilian wax”. Ms. Yaniv contacted her through Facebook to ask whether the service was still available. At this time, her profile showed the name “Jonathan” alongside a picture. The picture showed Ms. Yaniv with very short hair and no apparent makeup. Ms. Benipal assumed, based on the name and the picture, that Ms. Yaniv was a man and responded that it was for “ladies only”.

[46] It was a common theme through these complaints that service providers initially perceived Ms. Yaniv to be a man based on her name and picture. Ms. Yaniv strongly objected to this, arguing that there was no basis to assume her gender based on these details and that the very assumption was offensive. I disagree. While we may one day live in a society where a person’s gender is not assumed based on signifiers like name or appearance, we have not yet arrived at that point. For the most part, people still make assumptions about gender based on outward characteristics. While in some cases those assumptions are wrong – as they were in this case – they are mostly right. A service provider’s reliance on these assumptions is even more pronounced when they are communicating with potential clients via social media, with very little information.

[47] In my view, Ms. Yaniv’s incredulity that service providers initially perceived her to be a man is disingenuous. I accept that a woman could be named Jonathan, but for the most part in our culture we understand that it is a male name. Likewise, Ms. Yaniv’s profile picture when she communicated with Ms. Benipal and others showed an individual that many people would perceive to be male – particularly when paired with the name Jonathan. Ms. Yaniv demonstrated that she understood the importance of perceptions when she later used fake pictures and profiles to communicate with service providers using the name “Jessica”, and in doing so received a different response. I return to this below.

[48] After Ms. Benipal responded that her services were for ladies only, Ms. Yaniv responded “I am a lady”. Ms. Benipal accepted that explanation and gave her information about how to

make an appointment online. Ms. Yaniv then responded “Awesome ok, I am a trans woman just so you know and I haven’t gone through surgery yet so I still have male parts, but I really would like a Brazilian done to clean it up”.

[49] Ms. Benipal assumed that “male parts” meant penis and scrotum. She has not been trained to wax a scrotum and said that the request made her feel nervous and uncomfortable. During the hearing, she testified that she felt uncomfortable just talking about it, and her discomfort was apparent. She told Ms. Yaniv “Sorry I do only for ladies”.

[50] Two days later, Ms. Yaniv approached Ms. Benipal again. This time she used a Facebook account with the name “Jessica” and a picture showing a person wearing makeup with longer blond hair, which she found on the internet. These details would support an assumption that “Jessica” was a woman. She asked Ms. Benipal whether she offered brazilian waxes, and Ms. Benipal said that she did.

[51] Ms. Yaniv then asked whether Ms. Benipal would provide the service while she was on her period, pressing her to agree to work around the string of a tampon. While I found her to be evasive on this issue, Ms. Yaniv acknowledged that she was not menstruating and would not have required Ms. Benipal to work around a tampon. Rather, she testified that the purpose of asking this question was to test Ms. Benipal’s “professionalism” and to see if this was a “legitimate business”. I do not accept that explanation. If Ms. Yaniv were genuinely curious about the legitimacy of Ms. Benipal’s business, she could have asked questions related to training, licencing, facilities, or other matters relevant to the business. At this point, she had already been refused service and was using deception to gather more information for some other purpose. In an unrelated Facebook post, Ms. Yaniv said publicly that “The funniest thing is asking an immigrant for a tampon they freak out lol [crying/laughing emoji]”. In my view, the most likely scenario is that Ms. Yaniv was trying to make Ms. Benipal feel uncomfortable or awkward for her own amusement or as a form of revenge. This is consistent with Ms. Yaniv’s behaviour in relation to all of the Respondents.

[52] After Ms. Benipal confirmed that she would not provide a brazilian wax while a woman is on her period, Ms. Yaniv asked if she could bring a friend in for a brazilian wax with her. Ms. Benipal said yes, and then Ms. Yaniv said “Awesome, she’s transgender by the way, is that ok?”. At this point, Ms. Yaniv is pretending to be a cisgender woman and the “friend” in this question is actually her. Ms. Benipal replied, “No I only do for ladies I don’t do for men and transgender”, to which Ms. Yaniv ultimately replied, “That’s extremely discriminatory”.

[53] This still did not end the matter. Ms. Yaniv reached out to Ms. Benipal a third time, again using the name “Jessica” with a fake profile picture of a blond woman which she found on the internet. She asked to schedule an appointment for a brazilian wax and again said she was a transgender woman. This time, Ms. Benipal said that she was closed and was going away for six months. In her testimony, Ms. Benipal explained that she was just trying to end the conversation.

[54] Later, Ms. Yaniv saw that Ms. Benipal was advertising a promotion on Groupon. She contacted Groupon directly to complain that Ms. Benipal had engaged in discrimination. Ms. Benipal characterised Ms. Yaniv’s actions towards her as abusive.

[55] In my view, Ms. Yaniv has failed to prove that scrotum waxing was a service that Ms. Benipal customarily provided to the public. Ms. Benipal advertised the service of “brazilian waxing”, which I have found generally refers to waxing the genitals of a person with a vulva. Her evidence, which I accept, is that her intention was only to service “women” in her home, which she interpreted to mean persons with a vulva. I find that this complaint is not justified, and I dismiss it under s. 37(1) of the *Code*.

#### **D. Marcia DaSilva**

[56] This hearing was held on July 17, 2019. Ms. Yaniv testified on her own behalf, and also called her mother, Miriam Yaniv. Her mother’s testimony largely concerned the nature of Ms. Yaniv’s gender identity as a transgender woman – which I have accepted – and the various types of discrimination she has witnessed her daughter face – which I have found irrelevant to

the resolution of these complaints. As a result, I do not refer to this testimony in my decision. Ms. DaSilva testified on her own behalf.

[57] Ms. DaSilva is originally from Brazil. She began providing aesthetic services in her home in March 2018. At that time, she was the mother of three young children and pregnant with another. Her husband was not at home during the day. She began by providing services to her friends, and then decided to advertise her services on Facebook Marketplace. She began with a promotion advertising a brazilian wax for \$25. Her intention was to only serve “women”, meaning persons with a vulva.

[58] Ms. Yaniv reached out to Ms. DaSilva twice to inquire about this service, under the name “Jonathan”. Each time she did so, Ms. DaSilva marked the promotion “sold”, which stopped Ms. Yaniv being able to engage in a conversation with her. Ms. Yaniv then tried a different approach.

[59] Ms. Yaniv reached out to Ms. DaSilva using the name “Jessica”, with an account that Ms. DaSilva recalls showed a pregnant woman standing with a man. Ms. Yaniv claimed that this was her friend’s account, although I note that in previous cases she had set up very similar fake profiles herself. Ultimately, it does not matter whether “Jessica” was Ms. Yaniv or someone else – it is clear that “Jessica’s” intention in approaching Ms. DaSilva was to deceive her about who was requesting the service. “Jessica” booked an appointment with Ms. DaSilva and provided her with Ms. Yaniv’s cell phone to communicate with her directly.

[60] Ms. DaSilva texted “Jessica”, who was really Ms. Yaniv, and provided her with the address of her building complex. Ms. Yaniv alleged during the hearing that this was a fake address, but I accept Ms. DaSilva’s evidence that her practice was to provide clients with the address for her building complex. Once the client arrives, she can meet them outside before bringing them into her specific unit where her children are present. This allows her to vet the client for safety concerns.

[61] After receiving the address at 11:27 am, Ms. Yaniv texted Ms. DaSilva confirm her appointment at 4:00 pm and to say, “I’m a transgender woman just so you know”. She followed

this with “I’m really excited”, and Ms. DaSilva said “ok”. Ms. Yaniv responded with two more texts: “Thanks I appreciate it. I was born a man now I’m a woman so it’s been hard” and “you’re able to do this wax for me, right?”.

[62] At this point, Ms. DaSilva says that she was growing annoyed with the number of texts from Ms. Yaniv. She testified that she found it weird and started to think that Ms. Yaniv was playing around with her. She was at home caring for her four-year-old and was busy. Ms. DaSilva then responded to Ms. Yaniv:

Listen stop msg me if u gonna come u come if not it’s fine

U do t have a problem to do my job on no one

And also on ur profile u do t look transgender since show u pregnant so if u wanna play around find someone else ok

Thanks

[as written]

[63] Ms. Yaniv responded, “Excuse me?” and sent a photograph of herself in a pink baseball cap with make up on, saying “this is me”. This was clearly a different person than she had originally represented was coming. Ms. DaSilva called her husband to tell him what was happening and that she found it suspicious. He told her not to take the appointment if she felt unsafe. At this point, she decided that she did not feel comfortable keeping the appointment. She said, “Sorry I don’t have a problem but I don’t do it”. Ms. Yaniv responded, “why not?”, and Ms. DaSilva answered that her husband would not allow her to.

[64] Ms. DaSilva testified that, at the point when she refused Ms. Yaniv service, the disclosure that she was transgender was not an issue. Ms. DaSilva understood that a transgender woman would have undergone surgery and had a vulva. She testified that she would have no objection to waxing a vulva on a transgender woman. The reason that she cancelled Ms. Yaniv’s appointment because she found Ms. Yaniv’s behaviour to be odd and disconcerting. I accept this explanation.

[65] First, I found Ms. DaSilva generally to be a credible witness. She was straightforward in her testimony and her answers reflected the written conversation between the parties. Second, the explanation accords with the circumstances of the parties' encounter. Ms. DaSilva did not cancel the appointment when Ms. Yaniv disclosed that she was transgender. Rather, her response was to tell Ms. Yaniv to just come to the appointment and say that she did not have a problem serving her. She only ultimately changed her mind after Ms. Yaniv kept pushing, and sent her the picture of herself – revealing, for the first time, that she was not in fact “Jessica”.

[66] Here, context is critical. Ms. DaSilva was providing intimate services in her home, while she was the only adult home and her children were present. Up to that point, she had mainly provided these services for friends and family. She had very little opportunity or information to vet new clients to ensure her safety, and the safety of her children. I accept that she found her conversation with Ms. Yaniv to be strange. Her expectation was that she would provide the client with her address, and the client would text her when she arrived at 4:00 pm. Instead, hours before the appointment, the client was repeatedly texting her to confirm that she would do the appointment. This was disruptive and unusual. Finally, she discovered that the client was not who she initially thought she was. Indeed, by Ms. Yaniv's own admission, she had used deception to book the appointment. Ms. DaSilva was correct to intuit that things were not as they appeared, and it is understandable that she would follow her intuition and cancel the appointment.

[67] Ms. Yaniv argued that it was not strange for her to text Ms. DaSilva in advance of the appointment. She said that she was on her way to the appointment and wanted to ensure nothing would go wrong when she got there. I did not find this a credible explanation for her conduct. Ms. Yaniv said she was in a mall in downtown Vancouver when she first texted Ms. DaSilva at 11:27 am. She said that she ate some food and then began her trip out to Surrey for the appointment. She estimated that her journey would take about three hours on public transit and said that she likes to arrive to appointments about 45 minutes early. She testified that she was “halfway there” at the point that Ms. DaSilva told her she would not do the appointment. I find it unlikely that it would take a person four and a half hours to travel from

downtown Vancouver to Surrey, even on public transit, and even building in time to ensure an early arrival. It is also not clear to me how Ms. Yaniv was in a mall in Vancouver at 11:27 am when the conversation started, and “halfway” to Surrey when the brief conversation ended. Nothing ultimately turns on how early Ms. Yaniv was leaving to attend this appointment, but I find this as an example of evidence that Ms. Yaniv gave that strained credulity. I do not accept that her texts to Ms. DaSilva were innocent attempts to ensure she would receive a wax. Rather, it is more in keeping with her pattern of conduct that they were designed to elicit the response that she got – which was to cancel the appointment and set the stage for an allegation of discrimination.

[68] Ms. Yaniv did not end her engagement with Ms. DaSilva at that point. In addition to filing this complaint, she reached out to Ms. DaSilva’s employer and told them that Ms. DaSilva had discriminated against her and that it was “not ok”. According to Ms. DaSilva, whose evidence I accept, Ms. Yaniv told her boss that she should not be working with children. Ms. Yaniv then reported to Facebook that Ms. DaSilva was not using her legal name to run her account and, as a result, Facebook shut down Ms. DaSilva’s account. Ms. DaSilva testified that Ms. Yaniv made repeated attempts to contact her through Facebook, texts, and at work. She became afraid and reported her behaviour to the police. With a police officer present, she phoned Ms. Yaniv and the two had a heated conversation. As a result of her negative encounter with Ms. Yaniv, Ms. DaSilva closed her business.

[69] Ms. Yaniv has not persuaded me that Ms. DaSilva customarily provided the service of waxing scrotums. She advertised “brazilian waxing” and testified that she only waxes genitals of people with a vulva. This is dispositive of this complaint. However, I will add that Ms. Yaniv has also not persuaded me that Ms. DaSilva even knew that Ms. Yaniv had a scrotum when she cancelled the appointment, or that Ms. Yaniv’s gender identity otherwise played any role in Ms. DaSilva’s decision to deny service. Rather, I find that the only reason that Ms. DaSilva cancelled the appointment was because she found Ms. Yaniv’s behaviour troubling and deceptive – which it was. The complaint is not justified, and I dismiss it under s. 37(1) of the *Code*.

## E. Judy Tran

[70] This hearing was held on July 16, 2019. Ms. Yaniv testified, as did her mother Miriam Yaniv. For the reasons I have explained above, I did not find the mother's testimony relevant to the issues I have to decide. Ms. Tran did not participate in this complaint process, and so my decision in this complaint is based on the Facebook exchange between the parties, as well as Ms. Yaniv's testimony.

[71] Ms. Tran posted an ad on Facebook Marketplace, advertising for "waxing". Ms. Yaniv, using the name "Jonathan", contacted her to ask about what waxing services were available. Ms. Tran sent her a list of services and prices and invited her to make an appointment. Ms. Yaniv asked, "Are you licensed" and Ms. Tran said that she was. She explained she had worked in a salon for ten years and was now doing extra work at home. Ms. Yaniv made an appointment for a brazilian wax, and received Ms. Tran's address.

[72] At this point, Ms. Yaniv disclosed that she was transgender. Ms. Tran then said that she could not perform the brazilian, explaining that she was not comfortable and that she shared her space with someone else. Ms. Tran said that she had never worked for a transgender person. She asked Ms. Yaniv if she was a "a boy before", and Ms. Yaniv said "Yes. I'm a girl now". Ms. Tran repeatedly apologized and said that she did not "mean stigma". She suggested maybe Ms. Yaniv could come into the "shop" and begged Ms. Yaniv not to make it hard for her. At this point Ms. Tran removed her advertisement from Facebook Marketplace. Ms. Yaniv continued the conversation, pressing Ms. Tran to provide the service. Ms. Tran said she had never "done it before" and insisted that she did not know how to do the wax and was not qualified. She continued to apologize, and then told Ms. Yaniv that she had removed the waxing promotion and would not take any more clients. The conversation continued:

Yaniv: Do you know what discrimination is? As soon as I mentioned I am transgender, you did a 360 and said no after you gave me your address, and told me you can do the service and gave me the pricing as well. I will be filing a report with the human rights tribunal, I will be reporting you to the city as well.



Tran: why do you need to do that?

Just want to make extra money

Yaniv: because you are discriminatory and discriminatory people need not to be in business.

Tran: don't be so means with me, I already say sorry

Yaniv: Nope, I am reporting you for discrimination.

[73] Ms. Tran said she gave up, and could not do anything more than apologize. She said she was just a “small business” trying to make extra money, and that she was from another country. Ms. Yaniv’s response to that was “That’s not my problem if you don’t know the laws of this country and province in regards to discrimination”.

[74] In her testimony, Ms. Yaniv described Ms. Tran’s many excuses for refusing service to be “BS”.

[75] Ms. Yaniv did not present any evidence to persuade me that Ms. Tran customarily provided the service of waxing scrotums. Ms. Tran advertised for a brazilian wax, and that is the service that Ms. Yaniv requested. Ms. Tran confirmed that Ms. Yaniv “was a boy before” and in my view it is clear she understood Ms. Yaniv had a scrotum. Ms. Tran told her she had never waxed a transgender woman before, and was not comfortable, trained, or qualified. For reasons set out above, a brazilian wax – on its face – does not include waxing the genitals of a person with a scrotum. I find the complaint is not justified and I dismiss it under s. 37(1) of the *Code*.

## **F. Pam Dulay**

[76] This hearing was held on July 26, 2019. Ms. Dulay did not participate in this complaint. These facts are taken from the Facebook conversation between the parties, and Ms. Yaniv’s testimony.

[77] Ms. Dulay posted an advertisement on Facebook Marketplace, saying “Am a certified hair and make up artist I do threading waxing and facial too”. Ms. Yaniv, under the name

“Jonathan”, contacted Ms. Dulay to inquire about the service. She asked whether Ms. Dulay did brazilian waxes and Ms. Dulay said that she did. She asked whether Ms. Dulay was licensed, and she said yes. She asked whether the brazilian included the “butt” and Ms. Dulay said yes. Ms. Yaniv then said:

Perfect. 😊 It’s very hard for me to find someone that’s willing to do wax on me, since my transition to female. Many people don’t want to do it. I hope that’s not an issue for you?

[78] After this Ms. Dulay stopped responding until the next day when she said simply, “I can’t do it sorry”. Ms. Yaniv pressed her for a reason, eventually asking “Why are you ignoring me?”. Ms. Dulay responded: “My grandma passed away last week so right now I can’t do anything I’ll let u know when I can”. Ms. Yaniv had the final word: “You think I believe you? cause I don’t”.

[79] Ms. Yaniv has not led any evidence to prove that Ms. Dulay customarily provided the service of waxing a scrotum. She inquired about a brazilian wax, which does not include this service. I find this complaint is not justified and I dismiss it under s. 37(1) of the *Code*.

### **G. Merle Norman**

[80] This hearing was held on July 26, 2019. Ms. Yaniv testified on her own behalf. Merle Norman did not participate.

[81] Merle Norman was a business operating out of Metrotown Mall in Burnaby. Ms. Yaniv advises that, since her complaint was filed, the business has shut down.

[82] Ms. Yaniv phoned Merle Norman to book an appointment for a brazilian wax. She recorded their conversation, and provided a copy of the recording as evidence in this complaint. In the conversation, she scheduled the appointment under the name “Jonathan”. She then told the receptionist that she was transgender. The receptionist responded that the woman who did the waxes did not do waxing for transgender people. Ms. Yaniv finished the call, “I guess I’ll see you in court, bye-bye.”

[83] Ms. Yaniv reached out to the manager of Merle Norman the next day. She testified that the manager told her that the woman doing the waxing had a religious objection to performing the wax. The two argued. Ms. Yaniv subsequently filed a complaint with Merle Norman's landlord and the mall, as well as the corporate head office.

[84] Ms. Yaniv presented no evidence that Merle Norman customarily provided the service of waxing scrotums. I find the complaint is not justified and I dismiss it under s. 37(1) of the *Code*.

#### **H. Conclusion on genital waxing complaints**

[85] In sum, each of the Respondents advertised, and customarily provided, the service of "brazilian waxes". A brazilian wax is a commonly understood term which refers to the removal of hair from the genitals of a person with a vulva. Ms. Yaniv presented no evidence that any of these Respondents customarily provided the service of removing hair from a scrotum. As a result, their denials of service do not fall within s. 8 of the *Code*. I have dismissed all of these complaints on the basis they are not justified, pursuant to s. 37(1) of the *Code*.

### **VI LEG AND ARM WAXING COMPLAINTS**

[86] This portion of my decision addresses Ms. Yaniv's complaints against Sukhdip Hehar and Sukhi Beauty Dream Salon, and Hina Moin. In each of these cases, the service provider refused to provide Ms. Yaniv with an arm or leg wax after she disclosed that she was transgender. These complaints raise different issues than the genital waxing complaints.

[87] Most significantly, there is no material difference in waxing the arms or legs of a cisgender woman and a transgender woman. Ms. Barnettson confirmed this in her expert testimony, and no Respondent argued otherwise. I agree generally with Ms. Yaniv that a person who customarily offers women the service of waxing their arms or legs cannot discriminate between cisgender and transgender women absent a *bona fide* reasonable justification: *Eadie* at paras. 139-145.

[88] However, the Represented Respondents have persuaded me to dismiss these complaints on the basis that they have been filed for improper motives or in bad faith. For the reasons that follow, I dismiss the complaints against Mrs. Hehar and Sukhi Beauty Dream Salon, and Ms. Moin under s. 27(1)(e) of the *Code*.

[89] I begin by setting out the facts of these cases, and then proceed to apply s. 27(1)(e) to dismiss both of them.

### **A. Sukhdip Hehar and Sukhi Beauty Dream Salon**

[90] This hearing was on July 5, 2019. Ms. Yaniv testified on her own behalf. Mrs. Hehar testified, along with her father – Sukhdev Singh Hehar – and husband – Jagpal Singh Gill.

[91] Mrs. Hehar was raised in a traditional Sikh family. She has disabilities which have made her life difficult and made her vulnerable to exploitation. Her father testified that Mrs. Hehar had difficulty finding a husband in Canada and, as a result, the family travelled to India to find a husband there. This is how she met, and married, Mr. Gill. Mrs. Hehar described her husband as very traditional, and strict. It was a condition of her marriage that she quit her job as a care aid to stay at home.

[92] In around 2017, Mrs. Hehar's very young son was diagnosed with autism. She was worried about how to care for him. She met with her husband and father to discuss her idea to open a beauty salon to earn extra money for the family. Her husband agreed, on the condition that she would only provide waxing services to women – meaning cisgender women. Mr. Gill explained in his testimony that this rule was derived from their religion, which prohibits a woman from touching the body of an unknown man. Mr. Hehar added that it would also not be religiously appropriate for Mrs. Hehar to go into the home of an unknown man. Again, it was clear from their testimony that Mrs. Hehar and her family consider a transgender woman to be a man for the purposes of their religious and cultural rules.

[93] Mrs. Hehar began her business by only serving friends and family. She did not have her own salon space, and so she provided mobile services – meaning she traveled to the home of

her clients. She was only willing to travel within a certain distance of her home because she gets easily lost. She does not use maps but relies on her father if she gets lost.

[94] Mrs. Hehar posted an advertisement on Facebook Marketplace for arm and leg waxing services. Ms. Yaniv responded to the ad, using the name “Jonathan” and a picture depicting her with very short hair and no obvious makeup. Based on the name and picture, Mrs. Hehar assumed that Ms. Yaniv was a man. For reasons I have explained above, I find that was a reasonable assumption. Mrs. Hehar told Ms. Yaniv that the services were for ladies only, and Ms. Yaniv clarified that she was a lady. Mrs. Hehar asked Ms. Yaniv where she was located, and Ms. Yaniv said Langley. Mrs. Hehar then said that she only services people in Surrey, and travels to their homes. Ms. Yaniv said that she was right on the Surrey/Langley border.

[95] At that point, the conversation changed to be about Ms. Yaniv’s gender. Mrs. Hehar said, “But u look like a man lol” and Ms. Yaniv replied, “Excuse me? I’m a girl”. Ms. Yaniv pushed for Mrs. Hehar’s availability and then disclosed, “I’m a transgender, is that an issue for you?”. Mrs. Hehar said that she did not know what “transgender” was and so Ms. Yaniv clarified: “I’m a girl now... I used to be a guy”. Mrs. Hehar then said there was a problem, and she could not serve Ms. Yaniv because she did not feel comfortable. Ms. Yaniv told her that was discrimination and a violation of the *Human Rights Code*. Mrs. Hehar reiterated that she did not feel comfortable and added that her husband would not allow her to offer the service. She apologized a number of times. Ms. Yaniv finished the conversation:

no that’s not ok, it doesn’t matter what your husband will or won’t allow, you CANNOT discriminate and reject services based on someone’s gender identity and/or gender.

You work for [former employer], you should know this. You’re a care aid. You’re supposed to help the general public you cannot decide who and who not you will help based on their gender identity. [as written]

[96] There is no question that Mrs. Hehar was customarily providing the service of waxing arms and legs. It is clear from the conversation that Ms. Yaniv’s gender identity was a factor in her decision to refuse service. In that regard, I am not persuaded by Mrs. Hehar’s argument that Ms. Yaniv’s location outside her geographic area of service was the only reason behind the

denial. While I accept that this was the initial reason behind the refusal, the conversation carried on after Ms. Yaniv said that she was located right on the Surrey border. After that point, Mrs. Hehar was explicit in her explanation that she did not feel comfortable, and her husband would not allow her, to serve a transgender person. This would be sufficient to shift the burden to the Respondents to establish a *bona fide* reasonable justification for the denial.

[97] Mrs. Hehar argued that she was justified in refusing service to Ms. Yaniv because of her religious beliefs and the conditions of her employment established by her husband. I do not find it necessary to decide this issue in light of my decision to dismiss the complaint under s. 27(1)(e). What is significant in Mrs. Hehar's case is the degree to which she is vulnerable and, as such, fits the profile of vulnerable women that have predominantly found themselves to be the targets of Ms. Yaniv's complaints.

## **B. Hina Moin**

[98] This hearing was held on July 26, 2019. Ms. Moin did not participate in the complaint process. Ms. Yaniv testified, and I have relied on the Facebook conversation between the parties.

[99] Ms. Moin advertised on Facebook Marketplace for a number of beauty services. The advertisement said, "only for ladies". Ms. Yaniv contacted her through Facebook, using the name "Jonathan" and a picture in which she could be mistaken for a man. Ms. Moin's first response was that the service was "only for ladies". Ms. Yaniv clarified that she was a woman.

[100] Ms. Moin provided Ms. Yaniv with an address and explained that she provided the service out of her home. Ms. Yaniv asked Ms. Moin if she would do a brazilian wax, and Ms. Moin said that she only did arms and legs. Ms. Yaniv said that she needed a leg wax, and the two discussed times for an appointment. The conversation continued:

Yaniv: I do need to tell you though that I am a transgender woman.  
Some places have issues with that. Is that ok?  
??

Moin: No sorry I can't do it

Sorry

Yaniv: Why not? I am a woman.  
??

Moin: I am not allowed from my husband  
Sorry about that

Yaniv: What? I'm a woman.  
???

Moin: Sorry

Yaniv: No. I will take you to BCHRT cause you are discriminating  
against people.  
You're going to be in trouble if you keep discriminating against  
people.

Moin: Sorry I am out of wax I have to order it online

Yaniv: You are so full of crap.  
Don't lie to me.

Moin: I'm not lying

Yaniv: Sureee you're not.

Moin: Yeah I am not lieing

Yaniv: You went from ok, when can I come to "I am not allowed from  
my husband Sorry about that" to "I'm out of wax" you're such  
a discriminatory liar.  
I'm not stupid

[as written]

[101] Ms. Yaniv acknowledged in her testimony that she was angry during this exchange.

[102] As in the complaint against Mrs. Hehar, the elements of Ms. Yaniv's complaint are established on the face of this Facebook interaction. Ms. Moin is prepared to offer Ms. Yaniv a leg wax until she discloses her gender identity. Because Ms. Moin did not participate in this complaint, she has not advanced a justification for the denial. But for my decision to dismiss this complaint under s. 27(1)(e), I would likely have found it justified.

### C. Complaints filed for improper motives or in bad faith

[103] Section 27(1)(e) of the *Code* grants the Tribunal discretion to dismiss complaints that have been filed for improper motives or in bad faith. In *Stopps v. Just Ladies Fitness (Metrotown) and D. (No. 2)*, 2005 BCHRT 359, the Tribunal explained:

A complainant may be found to have filed a complaint for improper motives or in bad faith where, for example, the complainant is motivated by a purpose not consistent with that of the *Code*, or the complaint was not prompted by an honest belief that a contravention of the *Code* has occurred, but by some ulterior, deceitful, vindictive, or improper motive. The question of bad faith or improper motive must be judged by an objective standard, since it will seldom be possible to know the mind of the complainant. ... [at para. 13]

[104] This is a high bar, and the Tribunal rarely dismisses complaints on this basis. The focus of the inquiry is on the complainant's motives in filing their complaint, and not their conduct subsequent to that filing: *Gichuru v. WCAT*, 2007 BCHRT 189 at para. 59. However, the Tribunal may infer a complainant's motives in filing the complaint from their subsequent conduct: *Gichuru* at para. 59.

[105] A complainant's motives for filing a complaint may be complex. They may honestly believe that they have been discriminated against, and still file the complaint for improper motives or in bad faith. The Tribunal may dismiss a complaint in such circumstances, even if it would otherwise be justified, where it finds that the complainant's predominant, or overriding, purpose is improper or in bad faith: *Lungu v. BC (Min. of Children and Family Development) (No. 2)*, 2011 BCHRT 341 at paras. 19-21, upheld by BCSC (oral reasons, February 20, 2014). In *Lungu*, the Tribunal listed examples such as "where their predominant purpose is not to prevent or remedy alleged discrimination, but to punish or injure another party, or to relitigate issues, having nothing to do with the issues properly raised by the complaint or under the *Code*, and already dealt with in another forum": at para. 19.

[106] The Tribunal may dismiss complaints under s. 27(1)(e) either before or after a hearing, though it has frequently held that it is difficult to establish the basis for such a dismissal in a



preliminary application in which it is precluded from making findings of fact: *Crosby v. Dairyland Fluid Division Ltd and others*, 2004 BCHRT 1 at para. 35; see generally discussion in *Lungu* at paras. 10-14. In all cases, “the Tribunal should only exercise its discretion to dismiss a complaint ... as having been filed for improper motives or in bad faith, cautiously, and only in the clearest of cases”: *Lungu* at para. 21.

[107] In this case, I have already considered Ms. Yaniv’s motives in filing these complaints in two previous decisions and declined to make findings about whether they were improper: *JY v. JY v Mint Tanning Lounge and others*, 2018 BCHRT 282 [**Mint Tanning**] and *JY v. Various Waxing Salons*, 2019 BCHRT 106 [**Various Waxing Salons**]. I have now had the benefit of hearing seven of Ms. Yaniv’s complaints on their merits, and in particular hearing her testimony. Unlike in my previous interim rulings, I am now in a position to make findings of fact about Ms. Yaniv’s motives in filing the complaints based on a proper evidentiary record.

[108] I accept that Ms. Yaniv is partly motivated by her desire to fight what she perceives as pervasive discrimination against transgender women in the beauty industry. In that sense, her motives do align with *Code*’s purposes of eradicating discrimination and providing victims of discrimination with a means of redress. Further, if not for this application, I would likely have concluded that at least one of Ms. Yaniv’s complaints about arm and leg waxing was justified.

[109] However, I find that Ms. Yaniv’s predominant motive in filing her waxing complaints is not to prevent or remedy alleged discrimination, but to target small businesses for personal financial gain. In many of these complaints, she is also motivated to punish racialized and immigrant women based on her perception that certain ethnic groups, namely South Asian and Asian communities, are “taking over” and advancing an agenda hostile to the interests of LGBTQ+ people. These motives are not consistent with the *Code*’s purposes, and in particular its purpose of promoting a climate of understanding and mutual respect, where all are equal in dignity and rights: s. 3.

[110] I reach this conclusion based on a number of factors:

- a. The volume of similar complaints and the profile of the Respondents;

- b. Ms. Yaniv's use of deception to manufacture some of these complaints;
- c. Ms. Yaniv's efforts to punish the Respondents;
- d. Ms. Yaniv's stated desire to resolve all of her complaints for a financial settlement and her pattern of withdrawing complaints in the face of opposition;  
and
- e. Ms. Yaniv's animus toward certain racial, religious, and cultural groups.

I stress that none of these factors would be enough, on its own, to justify dismissing the complaints. However, taken together, they persuade me that the complaints are brought for improper motives and should not be condoned by this Tribunal. I consider each in turn.

1. *Volume of complaints and profile of Respondents*

[111] Ms. Yaniv filed 13 very similar complaints within a four-month time span. She continued to file complaints until the Tribunal asked her to justify how so many complaints on the same issue would further the purposes of the *Code*: see *Various Waxing Salons* at paras. 69-70. At that early stage, the Tribunal advised Ms. Yaniv:

There is no question that your complaints raise a possible contravention of the *Code* in respect of an under-studied area of public life which warrants scrutiny from the Tribunal. However, that important issue can be resolved through a public decision from this Tribunal. In my view, it may not be necessary for the Tribunal to process 14, or more, complaints to achieve its function in respect of this issue.

[112] The fact that Ms. Yaniv filed so many similar complaints is significant in two respects. First, it supports my findings below that in large part her motives were to punish these Respondents and seek financial remuneration rather than to have the Tribunal rule on the substantive issue that the complaints raise. Second, it allows me to discern a particular pattern in Ms. Yaniv's conduct.

[113] All of Ms. Yaniv's complaints, except for Merle Norman, followed a simple pattern. In 12 cases, the Respondent advertised waxing services on Facebook Marketplace. Ms. Yaniv

responded to the advertisement, using the name “Jonathan” and a picture from which a person could reasonably (even if wrongly) assume her to be a man. She requested waxing, usually a brazilian wax, and disclosed she was a transgender woman.

[114] In at least eight cases, the Respondent was offering waxing services in their home or in the homes of the client. In all cases, except for Merle Norman, the Respondent was a small or new business.

[115] At least eight of the Respondents present in their Facebook profiles as racialized women. By “racialized”, I mean not white. Their names are not English names. At least seven Respondents identify as immigrants to Canada and/or do not have English as their first language. In Mrs. Hehar’s case, she was born in Canada but has very strong family ties to India. Ms. Yaniv acknowledged in her testimony that she viewed the Respondents’ profiles on Facebook before requesting the service and, as such, had seen pictures of them and gleaned other personal information about them. In *Various Waxing Salons*, I identified this particular pattern as “troubling” but declined to make a factual finding that it was deliberate: para. 73. Having now heard the evidence in these complaints, I am satisfied that the pattern is deliberate and motivated by Ms. Yaniv’s animus towards certain, non-white, immigrants to Canada and, in particular, members of South Asian and Asian communities. I return to this below.

## 2. *Use of deception*

[116] Ms. Yaniv deliberately manufactured the conditions for each of her complaints by ensuring that the denial of service was captured in writing or, in the case of Merle Norman, recorded. She persisted in her communications until she had secured evidence that the denial was connected to her gender identity. In many cases, she used deception to achieve this end.

[117] Above, I have explained how Ms. Yaniv used fake profiles and identities to communicate with the Respondents. She toyed with Ms. Benipal by asking her questions about whether she would perform a brazilian wax around a tampon, for reasons that I find were petty and vindictive. In Ms. DaSilva’s case, she tricked Ms. DaSilva into providing her phone number and address. This repeated use of deception to manufacture the circumstances of these complaints

supports my finding that Ms. Yaniv was not genuinely seeking waxing services from these Respondents but rather setting the stage for a human rights complaint and the anticipated financial settlement that she hoped would follow.

### 3. *Financial motivation*

[118] In 10 out of her 13 waxing complaints, Ms. Yaniv initially sought the same remedy: an apology and \$3,000 in damages. Against Mint Tanning Lounge, she sought an apology and \$2,500 and against Merle Norman, she sought an apology and \$5,000. In her complaint against Laser Cut Beauty Salon, Ms. Yaniv did not identify a particular amount she was seeking, instead requesting simply a “penalty”. In her complaints, Ms. Yaniv frequently described the financial remedy in terms of a “settlement” or a “settlement offer”.

[119] I am now satisfied that, in filing these complaints, Ms. Yaniv was primarily motivated to resolve the complaints for a financial settlement. In *Various Waxing Salons*, I commented about this motivation as follows:

... There is, of course, nothing inherently wrong with this. Mediation is a vital part of this Tribunal’s process and is the means by which most human rights complaints are resolved. However, at the same time, it is voluntary. I have said elsewhere that “[t]he decision to resolve a human rights complaint through settlement is one that should only be made voluntarily because both parties feel it is in their best interests to do so”: *Colbert v. North Vancouver*, 2018 BCHRT 40 at para. 84. In her submissions, JY appears to infer that respondents who refuse to engage in settlement discussions with her are not behaving appropriately. For example, she says “I have settled many cases and I have encouraged the other Respondents to respectfully come to a settlement meeting. The fact they are ignoring the Tribunal and myself is irrelevant ...”. Contrary to this suggestion, respondents are under no obligation to negotiate with JY to resolve her complaints. [at para. 73-74]

[120] Notwithstanding these comments, Ms. Yaniv has continued to press her view that Respondents who decline to settle their complaints are acting in bad faith. This was reflected in Ms. Yaniv’s application for costs against Ms. Tran, which she brought during the hearing and which I dismissed. Ms. Yaniv argued that Ms. Tran had engaged in improper conduct by failing

to participate in the complaint process. In particular, she argued that, if Ms. Tran had participated, the complaint could have been resolved in mediation and it would have been unnecessary to go to the trouble of a hearing. I rejected that argument on the basis that it was her complaint that triggered the need for a hearing, and not Ms. Tran's decision not to participate or settle the complaint.

[121] This finding is further supported by Ms. Yaniv's pattern of withdrawing complaints in the face of opposition. In *Various Waxing Salons*, I found that she had "required parties and this Tribunal to invest time and resources into complaints which she does not appear prepared to pursue past a certain point": para. 81. I found that this conduct was improper and ordered her to pay costs to the Respondent. After that decision, she did not withdraw any further complaints.

[122] Overall, Ms. Yaniv's comments about settlement and her behaviour throughout the process supports that she targeted small businesses, manufactured the conditions for a human rights complaint, and then leveraged that complaint to pursue a financial settlement from parties who were unsophisticated and unlikely to mount a proper defence.

#### 4. Punitive behaviour

[123] In addition to seeking financial compensation, Ms. Yaniv sought to use these complaints as a method to punish the Respondents. This is reflected in the language she used in some complaints to describe the remedy she was seeking as a "penalty". It is also clear from Ms. Yaniv's pattern of conduct in respect of many of the Respondents. She warned Ms. Moin specifically: "you're going to be in trouble". She told Ms. Tran that "discriminatory people need not to be in business", suggesting that she intended to sabotage or threaten the business.

[124] These threats, and the complaints that followed, were part of a number of tactics which Ms. Yaniv used to punish the Respondents. She reported Ms. DaSilva to Facebook and told her employer that she should not be working with children, complained to Groupon about Ms. Benipal, reported Merle Norman to its landlord, and threatened to report Ms. Tran to the City. In this context, it is difficult to see Ms. Yaniv's human rights complaints as separate from her

apparent desire to inflict punishment on the Respondents. The *Code* is intended to promote a climate of understanding and mutual respect, not to punish or shut down small businesses.

#### 5. *Racial animus*

[125] I have already explained that Ms. Yaniv has brought most of these complaints against racialized women, many of whom are immigrants and/or do not speak English as a first language. Ms. Yaniv argues that this is only because these are the groups predominantly providing beauty services in her community. I do not accept that explanation. Ms. Yaniv has a grievance against certain ethnic and cultural groups in the lower mainland of BC which she perceives are failing to assimilate effectively into what she considers “Canadian” culture. These complaints are one way in which she is attempting to make this point and punish members of these groups.

[126] Ms. Yaniv has expressed some of her racial animosity through her Twitter account. For example, in one tweet, she promised to “expose” the “bigotry” of Indian women who would not serve her. In another, she said that the “problem” is “people who come here with hateful views using their religion as a shield to spew hatred and refuse service on ‘religious grounds’”. She has expressed distress at “putting my health in the hands of people who don’t understand freaking English” and incredulity that everyone in her city speaks “JUST Punjabi, even though the official languages are English and French”. She suggested that immigration officers should conduct identification checks in Surrey. And finally, in her most explicitly anti-immigrant tweet, Ms. Yaniv wrote:

We have a lot of immigrants here who gawk and judge and aren’t exactly the cleanest people. They’re also verbally and physically abusive, that’s one main reason why I joined a girls gym, cause I DON’T want issues with these people, nor do I want anything to do with them in anyway, shape or form. They lie about shit, they’ll do anything to support their own kind and make things miserable for everyone else.

Those immigrant women don’t join these clubs cause they have to be in gym clothes, so because they’re not there and never will be, it’s a “Safe place for me. [as written]

[127] In these hearings, Ms. Yaniv conceded that she had made these comments, or in some cases allowed her mother to express these views via her Twitter account. She denied that any of the comments were about the particular Respondents in these complaints. She explained her view that “certain groups” held discriminatory attitudes towards transgender people, specifically identifying people from Indian, Muslim, Hindu, and Sikh communities. She testified:

There is consistent ... systemic discrimination that comes from the East Indian and Muslim and Hindu community that have a very very negative effect on transgenderism. And I can prove it again and again and again. This is not Ms. Sukhi Hehar Gill. This is the race, religion, culture that she belongs to... The Sikh religion to a point has a very very very discriminatory view toward transgenderism, as well as certain other cultural groups and religions. [Hehar hearing]

And:

There is something systemic in the community that is due to a certain culture that has extremely biased views towards the transgender community. [Dulay hearing]

[128] Ms. Yaniv’s view is that “when people migrate to Canada, they’re required to follow Canadian culture and align to Canadian values” [DaSilva hearing]. In her view, these communities are failing to assimilate and are instead using their religion and culture as an excuse to discriminate against the transgender community. She went so far as to liken this so-called phenomenon to neo-Nazism. In that regard, she formulated the following question to her mother during direct examination:

Do you know what neo-Nazism is? ... You do. Do you believe that much of the harassment and refusal of service is a version of neo-Nazism? That’s part one. The part 2 of the question is basically the reason I’m asking this is because neo-Nazis seek to employ their ideology to promote hatred and attack minorities.... Basically my question is in regards to, they’re trying to make this province their own... [Tran hearing]

[129] Ms. Yaniv’s mother agreed that the neo-Nazi ideology is to “take over areas like Hitler and make it their own” [Tran hearing]. She later testified that white people were “becoming the minority” in Canada and that Indian people were “forcing their beliefs and their culture on the white people” [DaSilva hearing]. I place limited weight on Miriam Yaniv’s views because they

are her own. However, it is significant that this is evidence that Ms. Yaniv chose to elicit in support of her complaints and which is consistent with her own testimony and conduct. It supports my finding that Ms. Yaniv holds extremely negative views against South Asian and Asian people in her community.

[130] Ms. Yaniv has also drawn on racial and cultural stereotypes in submissions made directly to this Tribunal – in particular, to denigrate counsel for the Respondent in *Various Waxing Salons*. In that decision, I found:

In an attempt to make a point of her own, JY has made frequent reference and derogatory assumptions about the “culture” of Laser Cut’s legal counsel, Mr. Randhawa. She begins by arguing that Laser Cut’s conduct was tantamount to her “purposefully profiling Mr. Randhawa and attacking his culture, and his looks to committing crimes that are well known from that culture in the City of Surrey, such as the rampant gang shootings and then saying he did do that” [as written]. She then goes on, throughout her submissions, to make frequent reference to Mr. Randhawa’s “culture” being one that is “very conservative” and where certain topics are not discussed. She asserts that “the majority of people in Surrey unfortunately are unproficient in English and do not possess customers service skills”. Such comments, in my view, draw on racial and cultural stereotypes that have no place in this Tribunal’s process. Just as JY should not have to endure being misgendered, Mr. Randhawa should not have to endure irrelevant personal judgment statements derived from stereotype. [para 59]

[131] Ms. Yaniv denies targeting racialized and immigrant women in these complaints. She argues that it is simply a fact that “service providers here are dominantly immigrant”, such that “to say this is ‘targeting’ is essentially to say that if I were to travel to a different country, such as China and file three complaints, that I would be targeting Asians”. She asserts that, in her community of Surrey/Langley, waxing services are predominantly provided by Indian women. She testified:

Here in Surrey/Langley/Delta there are certain cultural groups that have these businesses and as much as you might want to get away from it you really can’t. ... You want to get waxing done it’s usually East Indian women that are looking for an extra buck. There’s really no way to get around it.... [DaSilva hearing]



And:

You can't go anywhere, to any service-based business without it being an immigrant. I'm kind of stuck... So I have to say to myself suck it up buttercup and you have to deal with it... I don't have a choice. Unless I ... go and I travel to Victoria, which I have done in desperate times... [Blue Heaven hearing]

I note that this testimony again reveals Ms. Yaniv's animus towards non-white immigrants and South Asian people. She describes being "stuck" and having no way around the need to interact with them.

[132] I do not accept Ms. Yaniv's explanation that the only reason so many of these complaints concern immigrant and racialized women is because these are the only people providing the service. Ms. Yaniv resides in the most populous area of the province – the Lower Mainland. Her testimony that she must travel to Victoria to "avoid" racialized service providers is not supported by any evidence and is not credible. Coupled with Ms. Yaniv's open hostility towards these groups, I cannot avoid the finding that Ms. Yaniv is using many of these complaints to fulfil her promise to "expose" the "bigotry" of South Asian and other immigrant or racialized women who would not serve her.

[133] Mrs. Hehar falls squarely within the category of Respondents who are the subject of Ms. Yaniv's racial ire. She is a first generation Canadian, and a member of the Indian community with close cultural and family ties to India. Although I have very little information about Ms. Moin's ethnicity, I note that her name is not an English one. It should go without saying that human rights complaints underlain by a racist agenda are antithetical to the *Code's* purposes: see e.g. *Chicoine v. College of Traditional Chinese Medicine Practitioners and Acupuncturists of BC and others*, 2005 BCHRT 407 at paras. 25 and 31.

#### 6. Conclusion: complaints brought for an improper purpose

[134] In sum, I accept that one of Ms. Yaniv's motives in filing these complaints was a genuine grievance about discrimination. In her arm and leg waxing complaints, I would likely have found at least one of the complaints justified. However, this good faith motivation is overtaken by Ms.

Yaniv's dominant, or overriding, purposes in bringing these complaints which run directly counter to the purposes of the *Code*. Taken together, the factors which I have identified above persuade me that Ms. Yaniv's overriding purpose was to manufacture the conditions for human rights complaints against unsophisticated and vulnerable respondents, in order to secure a financial settlement and punish individuals involved. In a majority of her cases, she also had the added motivation of punishing racialized and immigrant women whom she stereotypes as hostile to the interests of the LGBTQ+ community. Far from advancing the cause of LGBTQ+ people, Ms. Yaniv's conduct would, if condoned, threaten this Tribunal's integrity and its mission to foster an equitable, tolerant, and respectful society: *Code*, s. 3.

[135] I dismiss Ms. Yaniv's complaints against Mrs. Hehar and Sukhi Dream Beauty Salon and Ms. Moin under s. 27(1)(e) of the *Code*.

## **VII APPLICATIONS FOR COSTS**

[136] This Tribunal has jurisdiction, under s. 37(4) of the *Code*, to award costs against a party who has engaged in "improper conduct during the course of the complaint". Improper conduct includes "any conduct which has a significant impact on the integrity of the Tribunal's processes, including conduct which has a significant prejudicial impact on another party": *McLean v. BC (Ministry of Public Safety and Solicitor General) (No. 3)*, 2006 BCHRT 103 at para. 8. The purpose of a costs award is punitive: *Terpsma v. Rimex Supply (No. 3)*, 2013 BCHRT 3 at para. 102.

[137] Ms. Yaniv and the Represented Respondents each seek costs from the other. I address their applications in turn.

### **A. Ms. Yaniv's application for costs**

[138] Before these hearings, Ms. Yaniv filed two separate applications seeking costs. I directed the parties to make their submissions about costs at the close of the hearings, and they did so. In this portion of my decision, I collectively address:

- a. Ms. Yaniv's application for costs against Mrs. Hehar, filed June 21, 2019;
- b. Ms. Yaniv's application for costs against the Represented Respondents, arising out of the alleged conduct of their counsel and the JCCF, filed June 28, 2019; and
- c. Ms. Yaniv's application for costs against the Represented Respondents, arising out of the alleged conduct of their counsel and the JCCF, contained in her closing submissions filed August 6, 2019.

[139] These applications concern conduct both within and outside the Tribunal's process. I address each category of conduct separately.

*1. Conduct within the Tribunal's process*

[140] Ms. Yaniv argues that counsel for the Represented Respondents has engaged in improper conduct within the Tribunal's process by:

- a. Using inflammatory language to name certain documents;
- b. Attempting to submit irrelevant photographs of her;
- c. Arguing that she was seeking a "manzilian" or "brozilian"; and
- d. Being complicit in the improper recording, and dissemination, of portions of these hearings.

[141] There is no dispute that "a party is responsible for the improper conduct of their counsel while acting on their behalf": *Wells v. UBC (No. 4)*, 2010 BCHRT 100 at para. 111. If Mr. Cameron or Mr. Langhelm engaged in improper conduct in the course of representing the Represented Respondents, then those Respondents are responsible for the consequences of that conduct. However, I am not persuaded that the lawyers' behaviour had a significant prejudicial impact on the integrity of this Tribunal's process or on Ms. Yaniv warranting an order for costs.

[142] First, I accept that some of the language that counsel used to label electronic documents was provocative. Those titles included “screen shot – penis and testicles intact”, “screen shot – predatory”, “screen shot – would I go into the stall with young girl”, and “screen shot – want wax I have male parts”. However, all of these names arise from the subject matter of the messages captured in the files – messages which were written by, or attributed to, Ms. Yaniv or the people she was communicating with. In that sense, they were descriptive. Given their origins in Ms. Yaniv’s own communications – or communications attributed to her online – I cannot find that these titles significantly prejudiced her, or this process, in any way.

[143] Second, Mr. Cameron attempted to admit into evidence a number of photographs depicting Ms. Yaniv with a masculine gender expression. Ms. Yaniv objected to these photographs, and I ruled them irrelevant and inadmissible. I accept that it may be improper conduct for a party to seek to admit irrelevant evidence where its purpose is to undermine or shame a person about their gender identity. This could include relying on historic documents or photographs not relevant to the case. However, these cases were unique because Ms. Yaniv’s gender expression was directly at issue, in particular respecting her request for a publication ban, and her evidence about it was inconsistent, contradictory, and unclear. In an early application, she invoked privacy concerns in support of a publication ban, arguing that her gender identity as a woman was not public. Later, in these hearings, she argued that she has always presented as a woman and expressed indignation that any of the Respondents would have concluded from her name, Jonathan, and photograph, that she was a man. As a result, although I ultimately agreed with Ms. Yaniv that a number of the photographs were inadmissible, there was an explanation apart from anti-trans animus to explain Mr. Cameron’s attempt to rely on them. In these circumstances, an unsuccessful attempt to introduce this evidence did not have a significant impact on the integrity of the proceedings or prejudice Ms. Yaniv.

[144] Third, I do not agree that referring to the terms “manzilian” or “brozilian” amount to improper conduct. I have already acknowledged Ms. Yaniv’s understandable consternation at

these terms. However, they are industry terms which were highly relevant to the complaint and it was not improper to refer to them.

[145] Finally, I am not persuaded that Mr. Cameron or Mr. Langhelm were responsible for, or complicit in, the illicit recording of portions of these hearings. By way of background, these hearings were well attended by members of the public, many of whom appeared to take a particular ideological interest in the subject matter. During Ms. DaSilva's hearing, on July 17, a member of the public surreptitiously recorded portions of the hearing. This was in direct and flagrant violation of the Tribunal's "Public Access & Media Policy". Those recordings were then posted on YouTube. The Tribunal's attempts to have YouTube remove the recordings were unsuccessful.

[146] These recordings, and their publication, did have a significant impact on the integrity of the Tribunal's process and the parties involved. They were highly improper and clearly intended to inflame public sentiment against Ms. Yaniv and her mother. In that regard, they were posted by an account called "Wax Myballs". I accept that these videos caused prejudice and harm to Ms. Yaniv and undermined the Tribunal's ability to control its own process.

[147] Ms. Yaniv argues that the videos were taken by a woman seated behind Mr. Langhelm, who counsel identifies as Mr. Langhelm's mother. She points to one of the video clips which captures a portion of that woman's face. She also says that another member of the gallery confirmed that this woman was the guilty party, though she does not submit any evidence directly from this alleged witness. Mr. Cameron and Mr. Langhelm categorically deny any involvement in, or awareness of, the illicit recordings and argue that the allegation itself is improper.

[148] I do not find Ms. Yaniv's argument or evidence conclusive of the identity of the responsible party. Even if I were satisfied, however, that this woman made the recordings, there is no evidence that she did so at the behest, or with the knowledge, of Mr. Cameron or Mr. Langhelm. I take into account that both of these lawyers would ultimately be accountable to their governing body for engaging in such flagrant misconduct and I can discern no rational

motive for them to take such a chance. Even if she is Mr. Langhelm's mother, there must be some shred of evidence to attribute her conduct to him, and there is none. There is no basis on which to find that the Represented Respondents, through their counsel, engaged in improper conduct in connection with these recordings.

[149] In sum, I find that counsel for the Represented Respondents did not engage in improper conduct within the Tribunal's process. This aspect of Ms. Yaniv's applications is dismissed.

[150] Ms. Yaniv also sought an order for costs specifically against Mrs. Hehar arising out of her communication with the Tribunal and other parties while she was representing herself. She argues that Mrs. Hehar's conduct in suggesting that she looked like a man and including extraneous individuals on an email communication was improper. I disagree.

[151] This argument arises from an email that Mrs. Hehar sent to the Tribunal and other Respondents on June 9, 2018. In it, she explains that she has been under a lot of stress because of the complaint and Ms. Yaniv's attempts to secure a financial settlement. She says that she did not intend to be rude or disrespectful. She argues that, based on Ms. Yaniv's picture at the time of their interaction, she had thought that Ms. Yaniv was a man. She says that, because of Ms. Yaniv, she has become depressed and unable to work. She asks for help with her complaint.

[152] Overall, the tone of this email is polite, contrite, and desperate. Mrs. Hehar refers to all of the recipients as "respected all". She uses exclusively female pronouns to refer to Ms. Yaniv. Her reference to Ms. Yaniv looking like a man is not improper. Above, I have explained that the Respondents' assumption that she was a man, even if it was wrong, was relevant and reasonable in light of her name and the photograph which she used to initiate contact. It is not improper for Mrs. Hehar to explain the basis for her assumption. Finally, it is true that Mrs. Hehar sent this email to some Respondents who were no longer involved in the complaint. However, this error was clearly inadvertent. These complaints have been complicated by the number of Respondents involved and it is understandable that she would make a mistake in properly identifying everyone. This mistake had no impact on the process or Ms. Yaniv.

[153] In contrast to Mrs. Hehar’s respectful tone, Ms. Yaniv’s response to this email was rude and aggressive. She threatened to seek costs against Mrs. Hehar in the amount of \$500 for each individual she wrongly included on the email, for a total of \$2,500. She added another \$500 to this threat for Mrs. Hehar’s comment that she looked like a man. She said it was “not my problem or concern” that Mrs. Hehar has not been able to work. She warned Mrs. Hehar that “there is no free pass for discrimination and you’ll see this in July”. She finished her email with the gratuitous comment that Mrs. Hehar’s doctor had a 2.8/5 online rating.

[154] There is nothing about Mrs. Hehar’s conduct that would lead me to conclude she has acted improperly in the course of these complaints. Rather, it has been the opposite. She has been diligent and respectful under incredibly difficult circumstances and in the face of Ms. Yaniv’s threats to punish her. This aspect of Ms. Yaniv’s applications is dismissed.

[155] I turn now to Ms. Yaniv’s allegations of improper conduct arising from conduct that occurred outside the Tribunal’s process.

## *2. Conduct outside the Tribunal’s process*

[156] Throughout these proceedings, it has been apparent that the dispute between these parties was being played out simultaneously in two fora: this Tribunal and the court of public opinion. Ms. Yaniv spent her days giving evidence and making argument to the Tribunal, and her evenings battling her critics in the media and on social media. There is no question that Ms. Yaniv’s complaints have engendered a certain level of public vitriol, some of which can be attributed to her own conduct and much of which is also connected to her identity as a transgender woman.

[157] In her application for costs, Ms. Yaniv blames the JCCF, which employs the lawyers providing free services to the Represented Respondents, for creating “a hate mob of people to attack” her. In some instances, Ms. Yaniv points directly to public statements and press releases made by the president of the JCCF, John Carpay. In others, she attributes online behaviour to the JCCF without evidence of any connection. Finally, she argues that the JCCF is responsible for

the actions of Lindsay Shephard, who is identified on its website as an “employee” and who has publicly maligned Ms. Yaniv on the basis of her gender identity.

[158] In *Oger (No. 7)*, the Tribunal considered its costs jurisdiction in light of its purposes and the *Charter* right to free expression. It held that this jurisdiction was capable of capturing any conduct, within or outside its process, which:

- a. occurs during the period of time when a complaint is progressing;
- b. is connected to the complaint or stems from a person’s participation in the complaint before the Tribunal; and
- c. has a significantly prejudicial effect on the processing of the complaint and/or an individual involved in the process. [para. 307]

[159] I begin with the JCCF’s public statements about the complaint.

[160] The JCCF is a “secular, independent charitable organization that focuses on defending constitutional freedoms”: *A.B. v. C.D.*, 2019 BCCA 297 at para. 54. Unlike a traditional law firm, it focuses on cases that engage its mandate. In that context, it is reasonable to expect that the organization will undertake public advocacy around the cases that it identifies as significant, in a manner that supplements or supports the work of its lawyers directly involved in the case. It would be superficial to create a complete disconnect between the work of the lawyers on a particular case and the work of the organization on behalf of the greater cause. In my view, if the JCCF as an organization were to engage in improper conduct falling within the scope of the Tribunal’s jurisdiction, its clients could be held accountable for that conduct.

[161] In this case, Ms. Yaniv has submitted three articles written by the President of the JCCF, Mr. Carpay, and published on The Post Millennial. In “16 Vancouver women facing human rights complaints for refusing to wax transgender woman’s male genitalia”, Mr. Carpay repeatedly refers to Ms. Yaniv using male pronouns and alleges that her complaints were an abuse of the legal system. Although the article is undated, it is apparent that at the point it was written, the JCCF was not retained to represent the Represented Respondents. This is clear from Mr. Carpay’s complaint that the Tribunal had refused to inform the Respondents of their



offer of free representation. The timing of this article brings it outside the scope of the Tribunal's jurisdiction because, at that point, the JCCF was not directly involved in the complaint. The Represented Respondents could not be held accountable for its conduct during a period where they had not retained the JCCF as counsel.

[162] Mr. Carpay's second article is called "The 'human right' to compel women to wax male genitalia". It is also undated, although Mr. Carpay reports that the JCCF had been retained by two estheticians with hearings in July – which must include the Represented Respondents. Mr. Carpay describes Ms. Yaniv as a "transwoman with male genitalia", and reports on the history of her complaints. He twice refers to Ms. Yaniv using male pronouns.

[163] The final article is entitled "Mainstream media ignores the inconvenient truth of BC transgender male genitalia waxing case". Again, this article is undated, but it was clearly written during the time period when these hearings were underway, and JCCF counsel were representing the Represented Respondents. The tone of the article is still unfavourable to Ms. Yaniv but is less inflammatory. Mr. Carpay no longer uses male pronouns to describe her, but rather refers to "male genitals". He argues that Ms. Yaniv's complaints are without merit and concludes, "For someone with male genitalia to bring forward a 'human rights' claim to being legally entitled to have male genitals handled by an unwilling woman exposes the absurdity – and the real dangers – of progressive ideology".

[164] I can understand why these two articles would be offensive to Ms. Yaniv. I also accept that the use of male pronouns in particular is antithetical to the integrity of the Tribunal's credibility as a forum where transgender people are treated with respect. However, for the most part, Mr. Carpay's opinions reflect the submissions made on behalf of the Represented Respondents, some of which I have accepted in this decision. It is not inherently improper to argue publicly against a particular human rights complaint, and it is not this Tribunal's role to stifle or arbitrate public debate, however heated, about the cases that come before it.

[165] These articles do not rise to the level of public commentary which attracted a costs award in *Oger (No. 7)*. In that case, the Tribunal found that Mr. Whatcott had engaged in

repeated, persistent, public attacks against Ms. Oger. Those attacks contained language akin to hate speech: para. 310. In contrast, the public commentary at issue here is contained in two articles which, for the most part, do not personally attack, humiliate, or deride Ms. Yaniv, and certainly at nowhere near the level of Mr. Whatcott's commentary. In *Oger (No. 7)*, the Tribunal held that "[p]arties are free to say whatever they want about a complaint so long as they do so without significantly impacting the integrity of the Tribunal's processes or having a significantly prejudicial impact on another party": at para. 308. In this case, I cannot conclude that Mr. Carpay's articles impacted the Tribunal's process at all or significantly prejudiced Ms. Yaniv in her ability to advance her claims.

[166] Next, Ms. Yaniv accuses the JCCF of creating fake accounts to harass her online, stalking her, and posting flyers about her in Langley. Mr. Cameron and Mr. Langhelm deny engaging in this conduct and argue that the allegation itself is improper. There is no evidence that they, or anyone at the JCCF, were involved in this behaviour and I categorically dismiss the allegation that they were.

[167] Finally, Ms. Yaniv argues that the Represented Respondents are accountable for the online activities of Lindsay Shepherd, an associate of the JCCF. This is a bridge too far. The JCCF says that Ms. Shepherd is not its employee but is rather "a contract worker who has a narrow responsibility to promote and help educate the public on the importance of free speech at post-secondary universities". She does not represent the JCCF or have any role in these cases. It would be manifestly unfair and unprincipled to hold the Represented Respondents accountable for her activity online.

[168] In sum, I am not persuaded that the JCCF has engaged in conduct with a significant impact on the integrity of the Tribunal's process or a significant prejudicial effect on Ms. Yaniv's ability to bring these claims.

[169] Ms. Yaniv's costs applications are dismissed in their entirety.

## **B. The Represented Respondents' application for costs**

[170] The Represented Respondents argue that Ms. Yaniv has engaged in improper conduct throughout these complaints by:

- a. Filing her complaints for improper purposes;
- b. Offering evidence calculated to mislead the Tribunal about the need for a publication ban;
- c. Being untruthful with respect to a central aspect of these complaints, namely her genitalia;
- d. Engaging in "extortionate" behaviour; and
- e. Making false and unfounded allegations against counsel.

[171] I consider each of these arguments in turn.

### *1. Filing complaints for an improper purpose*

[172] I have already found that Ms. Yaniv filed these complaints for an improper purpose. This is clearly improper conduct: *Horn v. Norampac (No. 2)*, 2009 BCHRT 243 at para. 111; *Ma v. Cleator and another*, 2014 BCHRT 180 at para. 315. It has had a significant impact on the integrity of the Tribunal's process and on each of the Respondents. Filing the complaints cost Ms. Yaniv nothing, and for a long time she benefited from a cloak of anonymity. Her complaints consumed a large amount of the Tribunal's scarce time and resources. Finally, each of the Represented Respondents was detrimentally impacted by the complaints. Both Mrs. Hehar and Ms. DaSilva shut down their waxing businesses because of these complaints. I am satisfied that this is conduct that deserves rebuke.

## 2. *Offering evidence calculated to mislead the Tribunal*

[173] When Ms. Yaniv originally filed these complaints, she successfully applied to have the Tribunal protect her identity by way of an anonymization order and publication ban. I reviewed the history of this ban in *Various Waxing Salons*:

One of JY's first complaints, which was processed in the regular manner, was against Mint Tanning Lounge and two individual respondents [**Mint Tanning Complaint**]. In June 2018, JY applied to the Tribunal to limit publication of her name and restrict access to the contents of her complaint file in that complaint. At that point, the respondents were not participating in the process. As a result, JY's application was not opposed. I granted the application in a letter decision dated June 21, 2018, reasoning:

I accept that a person's gender identity is profoundly personal and they should retain control over how and when the public is informed of it. In certain circumstances, where a party wishes to pursue a human rights complaint but does not want to be publicly identified as transgender or gender non-conforming, their privacy interests may sufficiently outweigh the public's interest in knowing their identity in relation to a particular complaint.

However, [JY's] complaint is somewhat unique in that she has filed a large number of complaints of a similar nature. She has identified herself publicly as a woman, in some cases through online platforms such as Facebook, to all of the other respondents in those cases. [JY's] application is insufficiently detailed to understand the extent to which she is already identified as transgender or gender non-conforming publicly, so as to understand her privacy interests in respect of this complaint.

Furthermore, the Tribunal is holding a number of those complaints in abeyance pending resolution of the first [three]. As such, the parties to [JY's] other complaints have an interest in following the progress and outcome of the other similar complaints. This cannot happen if [JY's] name is not associated with the complaints. Depending on my ultimate findings in respect of this complaint, there may – or may not – be a public interest in publishing [JY's] name.

I ordered that JY's name be anonymized on an interim basis, and that the contents of her complaint file would not be available to the public up until the date of my final decision on the application. I said that I would make

that final decision after the hearing of the complaint and indicated that I would seek further information from JY about her request at the hearing.

Shortly after this decision, the individual respondents in the Mint Tanning Complaint retained legal counsel and indicated their intention to participate in the complaint. They asked me to lift the publication ban, arguing that JY in fact had a very public persona as a transgender woman, including with respect to sexually explicit material. Almost immediately after this submission, JY withdrew her complaint against the individual respondents. She later also withdrew against Mint Tanning. [paras. 6 -7]

[174] In *Various Waxing Salons*, I considered Ms. Yaniv's application for a publication ban in respect of the remaining complaints. There, Ms. Yaniv argued that "she and the people close to her were at risk of harassment and harm if her name is published in connection with these complaints": para. 31. I considered a number of factors which weighed both for and against allowing the ban, and concluded:

In sum, JY's privacy interests are complex. She has a public persona that is connected with her gender identity. As a result of her notoriety, as well as social prejudice towards gender diverse people, she is subjected to harassment and hatred. These complaints engage the issue of intimate services for transgender women and are sure to generate controversy and more hate directed toward JY. There is evidence to support that this has already occurred, given that JY's identity has been leaked and publicized online in connection with the complaints. On the other hand, JY's complaints raise an issue of significant public interest, and there is a specific public interest in publicizing JY's identity because of the sheer number of complaints that she has filed.

On balance, I have decided to grant JY's application for an order to limit publication. In reaching this conclusion, I have placed the most weight on JY's vulnerability as a transgender woman and the threats and harassment she is almost certain to endure if her identity is published in connection with these complaints. I take into account that JY's complaints are still at an interim stage in the Tribunal's process. Granting the order is the best way to ensure JY's continued safety while the Tribunal resolves her complaints. In the event that new facts come to light that affect my balancing, I may lift the order. In the meantime, however, I err on the side of maintaining JY's privacy because, once that is lost, "it can seldom be regained": *O'Connor* at para. 119. [paras. 47-48]

[175] During these hearings, the Represented Respondents applied to have me lift the ban. I granted the application in the Publication Ban Decision. I found that Ms. Yaniv had been publicly commenting about these cases, and other very similar circumstances, online through her Twitter account. I concluded:

Taken together, what these tweets demonstrate is that Ms. Yaniv has chosen to engage very publicly about the issues underlying her waxing complaints and, most importantly, about the complaints themselves. There is no purpose served by the Tribunal protecting Ms. Yaniv's identity when she does not feel the need to do so herself. Upholding a publication ban in this case undermines the integrity of the Tribunal as a public institution and can no longer be justified. [para. 14]

[176] The Represented Respondents argue that Ms. Yaniv behaved improperly by initially representing to the Tribunal she had not made any public statements to suggest she had transitioned from male to female, and that the public should not be able find her gender identity online: *Various Waxing Salons* at para. 38. I agree that Ms. Yaniv was not truthful about the extent to which her gender identity was already public at the time she invoked a privacy interest in that information. In *Various Waxing Salons*, I found that her "public reputation is already bound up with both her gender identity and her online persona": at para. 38. All of the evidence presented to me in these hearings supports this finding.

[177] Ms. Yaniv submits that she has always been consistent about the privacy interests in her gender identity. In her closing submissions, she says:

I have been transgender since age 6 suffering from gender dysphoria. While my legal gender was male, I was not entirely identifying as male.... Only very close friends and family knew I was transgender. The world however, did not know of this until recently, when I was essentially forced to come out as transgender when I was outed by the JCCF with their leak of my information.

She says that she only started publicly advocating about LGBTQ+ rights after the JCCF revealed her identity in connection with these complaints.

[178] I do not accept that explanation. Ms. Yaniv is attempting to draw a distinction between her gender identity (transgender), which she says was private, and her gender expression (expressing herself as a woman), which she concedes was public. In some cases that may be a fair distinction to draw, but in this case it was not. Ms. Yaniv's claim to the Tribunal that her gender identity was private was not truthful, given that her online persona included a number of instances where she expressed herself as a woman, including with respect to sexually explicit material: *Various Waxing Salons* at para. 7.

[179] Nor do I accept Ms. Yaniv's argument that it is the JCCF's fault that she has had to engage in public commentary around these and other similar issues. In that regard, she claimed to the Tribunal that her exposure as the complainant in these proceedings would put her at risk. I accept that is true, but Ms. Yaniv failed to acknowledge that she was at that point already a well-known target for online harassment. In doing so, she deliberately neglected to put before the Tribunal the full picture of her privacy interests, instead choosing only the information that would support her cause.

[180] The Represented Respondents also argue that it was improper for Ms. Yaniv to continue to rely on the shield of the publication ban, and to argue for its expansion, during the hearings while she was simultaneously tweeting about these and other similar complaints. I agree that Ms. Yaniv misled the Tribunal about her privacy interests during these hearings. She sought to use the Tribunal to her advantage in a war she was publicly and actively participating in. In the Publication Ban Decision, I held that, by invoking the protection of anonymity under false pretenses, Ms. Yaniv had jeopardized the integrity of the Tribunal as a public institution.

[181] As a result of Ms. Yaniv's misrepresentations, the Tribunal granted an anonymization order and publication ban, which allowed her to pursue these complaints under the cloak of anonymity for just over one year. The next question is whether this prejudiced the Respondents or the integrity of the Tribunal's process.

[182] I do not agree with the Represented Respondents that the Tribunal's publication ban has prejudiced them or any of the other Respondents in Ms. Yaniv's waxing complaints. These

complaints were consolidated early on, and all parties were kept informed of every decision and step along the way. The Represented Respondents argue that prejudice can be “inferred”, but I see no basis to draw such an inference. Nor can I connect the publication ban to any prejudice the Represented Respondents might have faced by their delay in retaining the JCCF as counsel. That was a function of the normal operation of the Tribunal’s Rules, which provide that information about complaints is not made public until 90 days before the hearing: Rule 5(10). Only at that point could the JCCF identify the Respondents and, presumably, reach out to them to offer legal services.

[183] However, the effect of those misrepresentations did have a detrimental impact on the integrity of the Tribunal’s process. The publication ban enabled Ms. Yaniv’s misconduct in filing these complaints, by allowing her to file such a high volume of complaints with no public accountability. By seeking the Tribunal’s protection at the same time as she was actively engaging online on these same issues, she undermined the integrity of the very order she had sought. I find, therefore, that circumstances have changed since I concluded in *Mint Tanning* that Ms. Yaniv’s representations did not prejudice the integrity of the Tribunal’s process. I now find that these misrepresentations were improper and do warrant an order of costs.

### 3. *Being untruthful with respect to a central aspect of these complaints*

[184] The Represented Respondents argue that Ms. Yaniv was “evasive, argumentative and difficult through most of the Hearings”. They say that her refusal to answer questions about her genitalia, even in the face of my ruling that the questions were relevant, significantly impacted the Tribunal’s process “by obstructing the Tribunal’s pursuit of a just resolution of these matters in pursuit of the truth”. They rely on cases where the Tribunal has found that it is improper for party to be untruthful with respect to the “central aspects” of the complaint: e.g. *Bains v. Metro College Inc. and others (No. 2)*, 2004 BCHRT 7.

[185] For her part, Ms. Yaniv concedes that she did evade and object to questions about her genitalia. She says, and I accept, that “being transgender and talking about genitalia publicly is



humiliating and embarrassing”. By far in most complaints based on gender identity, such questions would be improper and outside the scope of the complaint.

[186] However, Ms. Yaniv’s complaints are unique. Put simply, she made her genitals relevant. She sought a service on her genitals and then refused to answer questions about the service she was seeking, eventually giving inconsistent and untruthful evidence. In that regard, I find that her evidence that she was not asking Ms. DaSilva to wax a scrotum but a vulva was patently untrue. This was clearly evidence central to her genital waxing complaints. Her evasiveness on this subject matter took up time during these hearings and obstructed the Tribunal’s, and Respondents’, ability to get to the issues. This conduct was improper. On its own, I would not find it merits an award for costs. However, taken as part of a pattern of conduct which has compromised this process, I find it does warrant such an award.

#### 4. *Engaging in extortionate behaviour*

[187] The Represented Respondents argue that Ms. Yaniv has acted improperly by “repeatedly threatening to increase the quantum of costs sought against them in order to induce them into settlement”. They point to Ms. Yaniv’s application in which she seeks an order of \$500,000 in costs – an amount which they rightly argue bears “absolutely no resemblance to the highest amount of costs ever awarded by this Tribunal”. They say the circumstances are similar to *Colbert v. District of North Vancouver*, 2018 BCHRT 40, where I found:

... Mr. Colbert attempted to coerce the District into engaging in settlement discussions by threatening to increase the amount of damages he was seeking and to pursue further legal action in the courts, and by implying that the District was motivated by an anti-LGBTQ animus. The effect of his behaviour is to undermine the integrity of the Tribunal’s process, including its mediation services, and – as such – deserves rebuke.  
[para. 86]

[188] I have already found that Ms. Yaniv was improperly motivated to bring these complaints in large part for financial gain. In addition, I have referred above to Ms. Yaniv’s threats to seek costs against Mrs. Hehar arising out of her email. I also agree that the request for \$500,000 is completely divorced from reality or reason. This behaviour was part of her tactic to pressure

Respondents to engage in settlement discussions with her – a pressure that is antithetical to the purposes of the *Code* and the Tribunal’s mandate: *Colbert* at para. 84. In *Colbert*, I held that “Where a person seeks to use the Tribunal’s process as a weapon to extort or bully another person or organization into a financial settlement, it undermines the credibility of the process and the significance of the rights at issue”: para. 85. I find this is what Ms. Yaniv has done. It is improper and warrants an award for costs.

#### 5. *False and unfounded allegations against counsel*

[189] Finally, the Represented Respondents argue that Ms. Yaniv has acted improperly by falsely accusing their counsel and the JCCF of the behaviour I have outlined above, namely: creating fake social media accounts, distributing hateful flyers, and being complicit in the recording of these hearings.

[190] The Represented Respondents rely again on *Colbert*, where I summarized the law as follows:

... The Tribunal’s case law is clear that participants in the Tribunal’s process, including legal counsel, are entitled to be treated with respect. The Tribunal has an obligation to protect parties from inappropriate conduct during its proceedings: *Stone* at paras. 61-62. In *Stone*, for example, the Tribunal awarded \$2,500 in costs against Mr. Stone for his conduct in making unfounded allegations of perjury, and publicly insulting counsel for the respondent. [para. 76]

In that case, I concluded:

In my view, Mr. Colbert’s communications to [the respondent’s counsel] were insulting and disrespectful. They consistently sought to undermine [his] authority as counsel and assign moral blameworthiness for the actions that he was taking on behalf of his clients, including in cases aside from the present one. In his submissions in connection with his application for costs, he accused [counsel] of directing the District’s affiants to lie under oath, without any foundation. This conduct, in the course of a human rights complaint, is improper. [para. 82]

[191] I agree that Ms. Yaniv has made allegations against the JCCF and its counsel which are, at the very least, unproven, and at the most, outlandish and offensive. These include

allegations that the JCCF has led the charge against her through stalking, posting hateful flyers, and creating fake social media accounts to denigrate and harass her. These allegations arise in the context I have described above, where Ms. Yaniv has found herself at the centre of a frenzy of negative attention and hatred. Much of that vitriol appears sparked by anti-transgender animus, and some of it arises from Ms. Yaniv's own self-defeating conduct. Much of it has come from people whose identities are shielded and, as a result, Ms. Yaniv has directed her anger and speculation toward the JCCF – an organization which has been expressly and publicly critical of her and these complaints.

[192] Early on in this process, Ms. Yaniv withdrew two of her complaints after the JCCF was retained as counsel: *Various Waxing Salons* at para. 9. In doing so, her express purpose was to “remove” Mr. Cameron as counsel: *Mint Tanning* at para. 15. She later applied, unsuccessfully, to have Mr. Cameron removed as counsel for the Represented Respondents and barred from appearing in front of this Tribunal. She has ultimately been compelled to face him in these complaints, after I denied all applications to have him removed and found that her pattern of withdrawals was improper: *Various Waxing Salons*.

[193] I agree that Ms. Yaniv's conduct towards Mr. Cameron has fallen below the standard that the Tribunal expects of its parties: *Colbert* at paras. 79-81. The Tribunal has an obligation to protect parties and their representatives from “scurrilous attacks”: *Stone v. BC (Min. of Health Services) and others*, 2004 BCHRT 221 at paras. 61-62. This conduct was improper.

#### 6. Quantum

[194] I have concluded that Ms. Yaniv engaged in improper conduct by: filing these complaints for an improper purpose, misleading the Tribunal in respect of the publication ban, being untruthful with respect to a central aspect of her complaint, engaging in extortionate behaviour, and making scurrilous attacks on Mr. Cameron and the JCCF. I have found this conduct warrants rebuke in the form of a costs award, and I now turn to quantum.

[195] The amount that I award as costs should signal the Tribunal's condemnation of Ms. Yaniv's conduct and deter others from committing similar acts: *Ma* at para. 285. I may consider

factors including Ms. Yaniv's ability to pay the award, her relative culpability with respect to the conduct, and any other consequences that she is facing as a result of the behaviour: *Kelly v. ICBC*, 2007 BCHRT 382 at para. 91. In *Ma*, the Tribunal observed that issues such as "threatening conduct, contempt, destruction of evidence or the record, or attempts to derail the hearing" typically attract costs awards of \$5,000 and above. Unfounded allegations, untruthfulness or ulterior motives for filing a complaint attract awards in the range of \$1,000 to \$5,000: para. 315. In this case, the Represented Respondents say that \$15,000 – representing \$5,000 to each of them – is an appropriate amount.

[196] Several factors suggest that a high costs award may be appropriate to denounce Ms. Yaniv's conduct and deter similar behaviour in the future. Her improper conduct has taken multiple forms and impacted a number of complaints. She has hurt the Respondents by filing these complaints for improper purposes. Her conduct has had a significant impact on the Tribunal's process, taking up a lot of its scarce time and resources. Ms. Yaniv deliberately sought to weaponize the Tribunal for financial gain and to punish individuals and groups. There is no evidence of mitigating health-related factors that could explain Ms. Yaniv's choices throughout this process.

[197] Other factors weigh in favour of a lower award. Ms. Yaniv has already faced serious consequences as a result of these complaints. Once her identity and role in these complaints was revealed, she faced a torrent of backlash and hatred, and from that point onward was representing herself in very difficult circumstances. In addition, in this decision I have dismissed two of her complaints for being brought in bad faith. Finally, I must note that Ms. Yaniv was polite and deferential throughout the Tribunal's hearings.

[198] I have no information about Ms. Yaniv's ability to pay any award, aside from the fact that she is a business owner and has income.

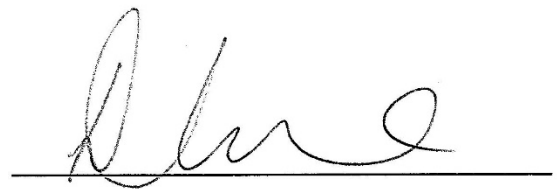
[199] In all the circumstances I am satisfied that \$6,000 strikes the right balance in expressing the Tribunal's condemnation of Ms. Yaniv's conduct while not exacting too harsh a punishment on her. In the circumstances, although Ms. Yaniv's conduct has likely impacted all of the

Respondents to her complaints, I can only issue this order against those Represented Respondents who attended the hearing and advanced this application. I order Ms. Yaniv to pay \$2,000 to each of Ms. Benipal, Ms. DaSilva, and Mrs. Hehar.

## VIII CONCLUSION

[200] In summary:

- a. Ms. Yaniv's complaints against Blue Heaven Beauty Lounge and Sandeep Benipal, Marcia DaSilva, Judy Tran, Pam Dulay, and Merle Norman are not justified. I dismiss them under s. 37(1) of the *Code*.
- b. Ms. Yaniv's complaints against Sukhdip Hehar and Sukhi Beauty Dream Salon, and Hina Moin, were brought for improper motives. I dismiss them under s. 27(1)(e) of the *Code*.
- c. Ms. Yaniv's applications for costs are dismissed.
- d. I order Ms. Yaniv to pay \$2,000 to each of Ms. Benipal, Ms. DaSilva, and Mrs. Hehar as costs for improper conduct, pursuant to s. 37(4) of the *Code*.

A handwritten signature in black ink, appearing to read 'Devyn', is written over a horizontal line.

Devyn Cousineau, Tribunal Member