



Court File No. **ABB-S-S-07078**

NO
ABBOTSFORD REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Kirstin Chase Olsen

(the Petitioner)

AND:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

(the Respondent)

PETITION TO THE COURT

ON NOTICE TO:

British Columbia Human Rights Tribunal

Theresa (Terry) Wiebe

The petitioner(s) estimate(s) that the hearing of the petition will take 1 day.

This matter is an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by

- the person(s) named as petitioner(s) in the style of proceedings above
 _____ (the petitioner(s))

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

The address of the registry is:

Abbotsford Registry

[REDACTED]
[REDACTED]

The address for service of the Petitioner is:

[REDACTED]
[REDACTED]
[REDACTED]

Fax number address for service:

[REDACTED]

E-mail address for service:

[REDACTED]

The name and office address of the lawyer for the Petitioner is:

Tabitha Ewert

[REDACTED]
[REDACTED]
[REDACTED]

CLAIM OF THE PETITIONER

PART 1: ORDER(S) SOUGHT

1. An order quashing the British Columbia Human Rights Tribunal decision *Wiebe v. Olsen*, 2025 BCHRT 14 dated January 22, 2025 (the “Decision”);
2. A Declaration that the Decision unreasonably infringes Kirsten Olsen’s freedom of expression, guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*;
3. Costs; and
4. Such other order as the court deems just.

PART 2: FACTUAL BASIS

5. The Petitioner, Kristin Olsen, has an address of service c/o [REDACTED] and at all material times was the owner of a property in [REDACTED] British Columbia.
6. The Respondent, Theresa (Terry) Wiebe has an unknown address and at all material times was a friend of the Petitioner.
7. The Tribunal’s decision in this matter refers to the Respondent as “Wiebe” throughout their decision. The Petitioner will refer to both parties in the same manner and means no disrespect by doing so.
8. Throughout this Petition, the Petitioner adopts much of the Tribunal’s terminology related to gender identity and expression.
9. Wiebe filed a complaint with the Human Rights Tribunal alleging that Olsen discriminated against them in their tenancy based on their gender identity or expression, contrary to section 10 of the *Human Rights Code*. In their Reasons for Decision dated January 22, 2025 *Wiebe v. Olsen*, 2025 BCHRT 14 (the “Decision”), the Tribunal decided that Wiebe’s gender identity was not a factor in Olsen’s decision to evict them.
10. The Tribunal also decided the following:

- (a) Wiebe and Olsen's relationship was a tenancy within the meaning of section 10 of the *Code*.
 - (b) Olsen's failure to confirm that Wiebe could stay on the property had an adverse impact on Wiebe's tenancy.
 - (c) Weibe was awarded damages in the amount of \$10,000.00 for injury to dignity.
11. The Human Rights Tribunal made the following key findings of fact.
- (a) That Wiebe and Olsen had a personal relationship that was far broader and more complex than any alleged landlord/tenant relationship.
 - (b) That Olsen made comments specifically about top surgery. Olsen's comments about top surgery were rooted in her own experience of her mother's breast cancer.
 - (c) There was no discrimination related to Wiebe's gender identity or hormone treatment for approximately a year and a half before Wiebe was evicted for permitted reasons.
12. The following is a brief outline of events as supported by the Tribunal's finding of facts:
- 2013 Wiebe and Olsen meet. Wiebe works for Olsen's business.
Wiebe sometimes sleeps on Olsen's couch due to her work.
- 2014 Wiebe begins staying on Olsen's property full-time.
Wiebe moves their motorhome on to Olsen's property in order to not leave her cat alone while she stays on the property for work.
- 2016 In November, Wiebe decided to change their gender identity. Later that year or early the next they tell Olsen.
- 2017 Twice Wiebe is hospitalized. Both times, Wiebe tells Olsen it is due to hormone treatment. The second time, Olsen pays for Wiebe to travel home.
In December, Wiebe is left in charge of the property. A dangerous incident occurs that shakes Olsen's trust in Wiebe.
In December, Wiebe gets into an argument at a party that caused Olsen to view Wiebe as a volatile presence who creates stress among the people living on her property.

More than once between April 2017 and June 2018, Wiebe asks Olsen if they could stay on the property even if they had top surgery and Olsen does not confirm one way or another but indicates that she did not support top surgery (the “Impugned Speech”).

2018 In June, Wiebe tells Olsen that they want to stop hormone treatment due to facial hair. This is the parties’ last conversation regarding gender identity.

In August, Wiebe gets into an argument with one of Olsen’s tenant’s that contributes to Olsen’s lack of confidence in Wiebe.

On September 19, 2018, Olsen asks Wiebe to move off her property.

Olsen’s Motives for the Impugned Speech

13. The Tribunal said the following regarding the Olsen’s motives behind the Impugned Speech:

- (a) [28] In her testimony, **Ms. Olsen said her discomfort with the idea of top surgery comes from her family history of breast cancer.** Her mother had a mastectomy due to breast cancer, and Ms. Olsen feared the same thing could happen to her. Ms. Olsen previously worked as a registered nurse, and she said she also feared that something could go wrong with Terry Wiebe’s surgery, and she would end up having to nurse and care for them. [emphasis added]
- (b) [140] We also consider that there was at least **some non-discriminatory basis for Ms. Olsen’s discomfort with top surgery.** As she explained, her mother had a double mastectomy due to breast cancer, and Ms. Olsen was afraid of the same thing happening to her. [emphasis added]

Wiebe and Olsen’s Complex Personal Relationship

14. The Tribunal said the following regarding Wiebe and Olsen’s relationship:

- (a) [18] At least until 2017, Ms. Olsen and Terry Wiebe were close friends. The two of them often sat down for coffee or meals together, on Ms. Olsen’s front porch or inside her trailer. They talked about personal and family issues. Terry Wiebe grew close with Ms. Olsen’s mother and got to know Ms. Olsen’s son. Terry Wiebe says they came to feel like part of Ms. Olsen’s family. On some occasions when Terry Wiebe needed money, due to urgent health or family situations, Ms. Olsen loaned or gave them what they needed.

- (b) [42] The relationship between the parties began to deteriorate in 2017, and grew tense by 2018. In this section we describe some of the incidents that caused it to deteriorate [for reasons unrelated to Wiebe's gender identity].
- (c) [105] There is no question that the parties had a friendly relationship, until 2017. We accept that their friendship was a reason for the low rent Ms. Olsen charged and her generosity in allowing Terry Wiebe to hook up to her utilities and run their business on her property. But the RTB policy guideline is not binding on the Tribunal, and the fact that the parties were friends does not preclude a finding that s. 10 of the *Code* applied to their relationship. **Their relationship was complex, and included elements of an employment relationship and a tenancy relationship, in addition to the personal nature of their friendship.** [emphasis added]
- (d) [125] The front porch of Ms. Olsen's trailer, where Ms. Olsen made the statements that Terry Wiebe describes as transphobic, was a significant location for the friendship between the parties. Both parties testified that they regularly had personal conversations there, during the years Terry Wiebe lived on Ms. Olsen's property. These conversations touched on serious issues like their family and health problems.
- (e) [156] We accept that Ms. Olsen's responses to Terry Wiebe's questions about their tenancy had a negative effect on the tenancy, but in the context of **the complex relationship between the parties**, this is not enough to prove that the eviction was connected to their gender identity. [emphasis added]

PART 3: LEGAL BASIS

15. The Petitioner will rely on the following:
- (a) *Human Rights Code*, [RSBC 1996] c 210
 - (b) *Judicial Review Procedure Act*, [RSBC 1996] c 241
 - (c) *Administrative Tribunals Act*, [SBC 2004] c 34
 - (d) *The Canadian Charter of Rights and Freedoms*

- (e) Rules of Court, and
- (f) The inherent jurisdiction of the court.

Standard of Review

16. Section 32 of the *Code* and section 59 of the *Administrative Tribunals Act* establish a standard of review of correctness for all questions except those respecting the exercise of discretion, findings of fact, and the application of common law rules.
17. The Petitioner alleges that the Tribunal made the following errors:
 - (a) The Tribunal erred in finding that Olsen had a tenancy relationship with Wiebe within in the meaning of section 10 of the *Code*.
 - (b) The Tribunal erred in finding that Wiebe experienced an adverse impact regarding a term or condition of their tenancy as a result of the Impugned Speech.
 - (c) The Tribunal erred in finding that gender identity or expression was a factor in the adverse impact they experienced.
 - (d) In the decision, the Tribunal penalized the Impugned Speech and erred by not having any regard for Olsen's freedom of expression as protected by s.2(b) of the *Charter* and therefore further erred by failing to balance such right with the statutory purpose of the *Code*.
 - (e) In the alternative, the Tribunal erred in determining the damages to dignity in the amount of \$10,000 without having regard to the proportionality of such penalty in fulfillment of the statutory purpose of the *Code* balanced against the s.2(b) *Charter* right of Olsen.

The Tribunal erred in finding that Olsen had a tenancy relationship with Wiebe within in the meaning of section 10 of the *Code*.

18. The Tribunal in their Decision relies on *McCulloch v British Columbia (Human Rights Tribunal)*, 2019 BCSC 624 ("*McCulloch*") in interpreting the scope of s. 10(1)(b). Importantly, in that case, the alleged tenant had a license to reside there bequeathed to

her by her father. It was this legal right that grounded the tenancy in absence of a traditional landlord/tenant agreement.

19. The Tribunal accepted that Wiebe and Olsen's relationship was complex with personal and employment dynamics. Indeed, Wiebe began staying on the property solely related to their employment on the property. They would sleep on Olsen's couch at the end of the day. They brought the motorhome on to the property in order to be able to continue that arrangement without leaving their cat alone (paras 16-17 of the Decision).
20. Wiebe and Olsen's relationship is more akin to that in *Brooks* and *Oloresisimo* than *McCulloch*. In both *Brooks* and *Oloresisimo*, the residence began as a part of an employment arrangement. After the employment was terminated, section 10 was found to no longer apply since, as distinguished from *McCulloch*, the claimant had no underlying right to occupy the property (*Brooks v. Skyacres Turkey Ranch Ltd. and others* (No. 2), 2022 BCHRT 73 at paras 222-223; *Oloresisimo v. Oloresisimo-Esquivel and Esquivel*, 2005 BCHRT 64 at paras 18-19).
21. The Tribunal erred in not considering *Brooks and Oloresisimo* and the fact that Wiebe's residence on the property began in an employment context. They failed to consider whether that employment relationship had ended, and, along with it, their legal licence to reside on the property.
22. There was not separate legal right grounding Wiebe's residence on the property. It was either an employment arrangement or grounded in Wiebe and Olsen's friendship. Both of which had been extinguished for reasons unrelated to Wiebe's gender identity.
23. In the alternative, the Tribunal erred in finding that Wiebe and Olsen's relationship was a tenancy relationship according to the *McCulloch* factors. The Tribunal found that Wiebe made payments of \$100-\$200 to Olsen. Importantly, they found that Olsen did not ask for the rent (para 98 of the Decision). Nor is the amount Wiebe paid remotely close to what a market rate for rent would be. The fact that Wiebe made payments even though Olsen did not demand it is insufficient to establish a tenancy relationship.
24. The *McCulloch* factors include whether the alleged landlord had control over the alleged tenant's living space, whether the impugned conduct occurred in the alleged tenant's living

space, and whether the alleged tenant's living space was negatively affected (*McCulloch* at para 130).

25. The Tribunal made a finding of fact that Olsen did not have control over the interior of Wiebe's living space, but did have control over the land the motorhome was parked on (paras 111-112 of the Decision).
26. The Tribunal erred in placing emphasis on the control Olsen had over the land as Wiebe had the option of moving the motorhome and maintaining her living space in a different location.

The Tribunal erred in finding that Wiebe experienced an adverse impact regarding a term or condition of their tenancy as a result of the Impugned Speech.

27. It is well established that there must be "something more" than an unwelcome comment to evoke section 10: "The Code was not intended to insulate people from any and all comments which might be considered insensitive. Were it to do so, it would have an unwarranted and unintended chilling effect on normal human interaction." (*Dennis v. B.C. (Ministry of Skills, Development and Labour) and others*, 2003 BCHRT 169 at para 20).
28. The Tribunal elaborated on this point in *Smith v. Mohan (No. 2)*, 2020 BCHRT 52 at para 213 ("*Smith*"):
 - [213] The Tribunal has said that when deciding whether negative comments rise to a level of harassment that adversely impacts a person in their tenancy and, in that sense, go beyond the boundaries of reasonable social interaction, the context is critical, including "the involved parties, the context in which the comment was made, whether an apology was offered, and whether or not the recipient of the comment was a member of a group historically discriminated against": Brito at para. 43. To that, I would add the virulence or egregiousness of the comments is a relevant factor: Francis at para. 314. Overall, what the Tribunal is concerned with is barriers to the participation in the areas of life protected by the Code: Brito at para. 41.

29. The Tribunal erred by not taking proper consideration of the fact that the impugned speech was in the context of a longstanding and complex personal relationship which also involved Olsen taking care of Wiebe after she was hospitalized for what at the time was perceived to be related to hormone therapy (*Smith* at para 205).

30. In *Smith*, the tenant was interacting with a man who she had no relationship with outside of the tenancy context. Additionally, “It was not one comment: it was a pattern of comments and invasive questions over a number of months based at least in part on Ms. Smith’s protected characteristics and in some cases on stereotypes about Indigenous peoples.” (para 180).
31. In this case, the Tribunal found that Wiebe and Olsen had a complex longstanding personal friendship. As the Tribunal found that other comments were not related to the tenancy, the issue of the Impugned Speech is not a pattern of speech or actions relating to the tenancy. Rather, the Tribunal’s Decision involves solely Olsen’s noncommittal response to one question (albeit they found this response was said more than once).
32. Compare this alleged discrimination to the facts in *Brooks* where the complainant was forced to hide his relationship with his husband along with having water shut off to his residence. In that case the landlord was very clear that he did not want the same sex couple on his property because of their sexual orientation.
33. Olsen’s Impugned Speech may have been unwelcome, but they do not rise to the level of harassment to effect the “quiet use and enjoyment” in the context of tenancy, were a tenancy to even exist.

The Tribunal erred in finding that gender identity or expression was a factor in the adverse impact they experienced.

34. The Tribunal erred in not considering whether there was sufficient connection between the impugned speech and Wiebe’s gender identity.
35. While the Petitioner acknowledges that Wiebe was not required to prove that Olsen intended to discriminate, she does submit that it is essential that Wiebe prove that Olsen did discriminate.
36. The Tribunal’s findings demonstrate that Olsen’s Impugned Speech was based on her experience with her mother’s breast cancer rather than discriminatory reasons related to gender identity or expression.

37. All of this leads to the conclusion that Olsen would have had the exact same response were the tenant a cis female considering a mastectomy for cosmetic reasons. The issue between Wiebe and Olsen comes down to top surgery, not Wiebe's gender identity.
38. The question is not solely what Olsen intended, but also, what did Wiebe experience. Based on the findings of the Tribunal it is apparent that Wiebe acted on the understanding that top surgery was a separate conversation than their gender identity:
 - (a) Wiebe did not ask Olsen whether they could continue to live on the property if they changed their gender. To the contrary, Wiebe had already changed their gender or was still in the process of changing their gender for a considerable period of time while secure in their tenancy.
 - (b) Wiebe did not ask Olsen whether they could continue to live on the property if they were on hormone treatment. To the contrary, Wiebe had undergone hormone treatment while living on the property.
 - (c) Wiebe did not experience an adverse impact in their tenancy due to their decision to change their gender even though that decision was communicated approximately 18 months prior to their eviction.
 - (d) Wiebe did not experience an adverse impact in their tenancy due to their hormone treatment over the approximately 18 months they were undergoing that treatment.
39. As a hypothetical, it is possible that an individual's comments or actions relating solely to top surgery could constitute discrimination for the purpose of section 10. This case, however, ought to be decided in its own factual matrix where the comments related to top surgery were grounded in a non discriminatory rationale.
40. On the evidence, it is apparent that Wiebe understood or seemingly acted upon a belief that Olsen's concerns were specifically related to top surgery and not to their gender identity. It is plain on the evidence that both Wiebe and Olsen approached the conversation regarding top surgery differently than the topic of Wiebe's gender identity generally or their hormone treatment specifically.
41. Wiebe's question which initiated the Impugned Speech was specific: "if I have chest surgery, am I safe on this property?" (para 37 of the Decision). There is no corresponding

question related to changing their gender or embarking on hormone treatment both of which Wiebe did seemingly without fear of or actualized recourse from Olsen.

42. While having regard to the context of Wiebe's prior gender transition with use of hormone treatment while remaining secure in the alleged tenancy with support from Olsen after being released from the hospital, it is an error to find that the Impugned Speech discriminated on the basis of gender identity or expression regarding a term or condition of the alleged tenancy.

The Tribunal erred by failing to consider Olsen's s.2(b) *Charter* right to freedom of expression as against the Code's statutory objective before penalizing the Impugned Speech

43. In *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31, the Court found that a decision must reflect the fact that the decision maker considered the *Charter* values that were relevant and that it meaningfully addressed the *Charter* protections to reflect the impact that its decision may have. There must be a proportionate balancing of the *Charter* protection(s) engaged with the statutory objectives.
44. As provided for in *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22, failure of a decision maker to account for a *Charter* protection or value is a fatal error.
45. The Tribunal erred by failing to at all: 1) recognize Olsen's freedom of expression being engaged; and 2) balancing her *Charter* right and the values of the freedom of expression with the statutory objectives of the Code.

PART 4: MATERIALS TO BE RELIED ON

1. Affidavit #1 of Kirstin Olsen
2. Such further and other materials as counsel may advise and this Honourable Court may permit.

DATED: March 21, 2025



Tabitha Ewert
Lawyer for the Petitioner

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this petition

with the following variations and additional terms:

Date [dd/mmm/yyyy]: _____

Signature of Judge Associate Judge