

Indexed as: Wiebe v. Olsen, 2025 BCHRT 14

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:

Theresa (Terry) Wiebe

COMPLAINANT

AND:

Kirstin Chase Olsen

RESPONDENT

REASONS FOR DECISION

Tribunal Members:	Andrew Robb, Robin Dean, and Devyn Cousineau
On their own behalf:	Terry Wiebe
On their own behalf:	Kirstin Chase Olsen
Date of Hearing:	June 17 to 20, 2024
Location of Hearing:	Microsoft Teams Videoconference

I INTRODUCTION

[1] Terry Wiebe (they/them) is transgender. They filed this complaint under their legal name, Theresa Wiebe. They allege that Kirstin Chase Olsen (she/her) discriminated against them in their tenancy, based on their gender identity or expression, contrary to s. 10 of the *Human Rights Code*.

[2] Terry Wiebe lived in a motorhome on property owned by Ms. Olsen, from 2014 to 2018. The parties were close friends, at least until 2017. In addition to being friends, Terry Wiebe says they had a tenancy relationship, and Ms. Olsen was Terry Wiebe's landlord.

[3] In 2017, Terry Wiebe told Ms. Olsen they were planning to change their gender. In response, they say Ms. Olsen made transphobic statements. They say their relationship with Ms. Olsen deteriorated after they told her about their plans. In 2017 and 2018, they asked Ms. Olsen, more than once, if their tenancy would be affected if they got gender-affirming surgery. Ms. Olsen did not respond directly, but said she was uncomfortable with it. Terry Wiebe says Ms. Olsen's response to their questions was discriminatory, and negatively affected their tenancy. In 2018, Ms. Olsen evicted Terry Wiebe. Terry Wiebe alleges that their gender identity, including their plan to change their gender, was a factor in the eviction.

[4] Ms. Olsen denies that her relationship with Terry Wiebe was a tenancy within the meaning of the *Code*. Even if it was a tenancy, she says she did not discriminate against Terry Wiebe based on their gender identity or expression. While she did not support Terry Wiebe's plan to get gender-affirming surgery, she says this had no connection to or effect on the tenancy.

[5] Ms. Olsen says Terry Wiebe's gender identity or expression was not a factor in the eviction. She says she evicted them for solely non-discriminatory reasons including:

- a. Terry Wiebe's conduct became increasingly volatile, and caused tension among Ms. Olsen's friends and family, in 2017 and 2018;

- b. Ms. Olsen lost her trust in Terry Wiebe, and became frustrated with their lack of appropriate boundaries;
- c. Ms. Olsen wanted to use the part of her property where Terry Wiebe's motorhome was located for other purposes, such as a new facility for her business or a residence for her mother; and
- d. Terry Wiebe was responsible for the property becoming unsightly.

[6] The complaint was heard by a panel of three Tribunal members. The panel has considered the evidence given by the witnesses, and the final submissions made by Terry Wiebe and Ms. Olsen at the end of the hearing.

[7] For the reasons set out below, we find the parties' relationship was a tenancy, for the purpose of s. 10 of the *Code*. We accept that Ms. Olsen evicted Terry Wiebe for non-discriminatory reasons, and we find their gender identity or expression was not a factor in the eviction. However, Ms. Olsen was responsible for an adverse impact on Terry Wiebe's tenancy, which was connected to their gender identity, when she said she would be uncomfortable with Terry Wiebe getting surgery, in response to their questions about whether they could stay on the property, in 2017 and 2018. In this respect Ms. Olsen discriminated against Terry Wiebe, contrary to the *Code*.

[8] As a remedy, we order Ms. Olsen to pay Terry Wiebe \$10,000, as compensation for the injury to their dignity, feelings, and self-respect.

[9] Before setting out our decision, we acknowledge that the hearing process caused harm to Terry Wiebe. Ms. Olsen and the other witnesses misgendered Terry Wiebe throughout the hearing. The panel repeatedly reminded Ms. Olsen and the other witnesses to use the correct pronouns for Terry Wiebe, but our reminders were generally not effective. The witnesses, who knew Terry Wiebe before they started using they/them pronouns, apologised and corrected the mistake when it was pointed out to them. But we did not point it out every time the witnesses used the wrong pronoun, because it happened so frequently that doing so would have

undermined their ability to give evidence. This was understandably frustrating and upsetting for Terry Wiebe. We regret that the process harmed them.

[10] We apologise to both parties for the Tribunal's delay in making a decision about this case.

II FACTS

[11] Terry Wiebe testified on their own behalf. They also called two other witnesses: Kelcie Zimmerman, who has been their friend since 2016, and Katie Berry, whom they met shortly before the eviction.

[12] Ms. Olsen testified on her own behalf and called four other witnesses:

- a. Nelle Maxey, Ms. Olsen's mother;
- b. Lita Moth, Ms. Olsen's friend, who had a relationship with Terry Wiebe during 2016 and 2017;
- c. Julia (Yula) Stachelski, a tenant on Ms. Olsen's property while Terry Wiebe lived there; and
- d. Kimberley Mason, another tenant on Ms. Olsen's property while Terry Wiebe lived there.

[13] For the most part, we found the witnesses gave their best recollections of the events described in their testimony. There was no dispute about relevant background facts, from the first few years after Terry Wiebe moved onto Ms. Olsen's property. There is conflicting evidence about some issues that are relevant to our decision, including:

- a. What Ms. Olsen said to Terry Wiebe, after Terry Wiebe disclosed that they were considering changing their gender;

- b. Whether Terry Wiebe asked if their tenancy would be safe if they got gender-affirming surgery to remove their breasts, and how Ms. Olsen responded;
- c. Whether the parties intended their relationship to be a tenancy; and
- d. The reasons for Ms. Olsen’s decision to evict Terry Wiebe, and whether those reasons were connected to their gender identity or their plan to change their gender.

[14] Where we make findings of fact about these issues, we will explain what evidence we prefer, and why. In making these findings of fact, we must determine which evidence is more plausible based on a balance of probabilities: *Ms. S v. Cannae Holdings*, 2018 BCHRT 47 at para. 12. In assessing which evidence is more plausible, the Tribunal considers the credibility and reliability of that evidence. In assessing credibility and reliability, we are guided by the principles set out in *R. v. S.A.S.*, 2021 BCPC 69 at paras. 21-27; *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, affirmed in 2012 BCCA 296; and *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 10.

A. Beginning of the parties’ relationship

[15] Ms. Olsen’s property is in a rural region of British Columbia. She lives and operates a business on the property. At the hearing, the parties generally referred to Ms. Olsen’s business operation as her “shop”.

[16] In 2013, a mutual friend introduced Terry Wiebe to Ms. Olsen. Soon after that, Terry Wiebe agreed to work for Ms. Olsen’s business. When they first started working for Ms. Olsen, they were living in rental premises elsewhere, and they sometimes slept on Ms. Olsen’s couch instead of returning home at the end of the day. But they did not like to leave their cat alone at home for long, so they asked Ms. Olsen if they could bring their motorhome to her property. Ms. Olsen agreed. Terry Wiebe then gave notice at their previous residence and moved their motorhome to Ms. Olsen’s property. They started living there full-time in 2014.

[17] There was never any written tenancy agreement between the parties. Ms. Olsen initially told Terry Wiebe they did not need to pay rent, but Terry Wiebe insisted, and the parties agreed that they would pay rent of \$100 per month. During the time Terry Wiebe lived on the property their rent increased, in increments, up to \$200 per month. The parties agree that this was still relatively low, and it included some utilities. Terry Wiebe did not always pay rent in cash. They sometimes paid what they owed by working in Ms. Olsen's shop and around her property.

[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.

[19] When Terry Wiebe moved to Ms. Olsen's property, Ms. Olsen was living in a single-wide trailer on the property, while renovating a double-wide trailer she planned to move into. Terry Wiebe helped renovate the double-wide. Once Ms. Olsen moved into the double-wide, she started renting out the single-wide to tenants, including Ms. Stachelski and Ms. Mason, at different times.

[20] In addition to working for Ms. Olsen, during much of the time they lived on the property Terry Wiebe also ran their own business, collecting empty bottles and other recyclable materials, and exchanging them for cash at recycling depots. Terry Wiebe used a shed on Ms. Olsen's property as a storage space for recyclables.

[21] After Terry Wiebe moved the motorhome onto Ms. Olsen's land, they took steps to make it more comfortable, and more permanent. In a decision about the eviction, the BC Supreme Court described those steps as follows:

Over the years of the arrangement, certain structures were built around the motorhome, including: a roof extending over and past the footprint

of the motorhome, a fence, a deck, a temporary shed, and an outhouse. The structure was fully skirted. The wheels were removed. It was placed on plastic blocks. In 2017, [Terry Wiebe] winterized the motorhome with spray foam insulation by sealing the passenger and driver side doors.

[Terry Wiebe] was provided with electricity through an extension cord from an outbuilding on the Property. Later [they] installed a buried power line. Water was provided through a water hose running from the same outbuilding, at no additional cost. At some point, [they] installed an insulated water line at their own expense.

Wiebe v Olsen, 2019 BCSC 1740 [the **Judicial Review Decision**] at paras. 5-6

[22] From approximately the autumn of 2016 to the summer of 2017, Terry Wiebe spent much of their time at Ms. Moth’s residence, but they regularly returned to the motorhome on Ms. Olsen’s property, mainly to attend to their business. They resumed living full-time in the motorhome around August 2017, after their relationship with Ms. Moth broke down.

B. Terry Wiebe’s gender identity

[23] In November 2016, Terry Wiebe decided to change their gender identity, and they told Ms. Moth about this decision. Terry Wiebe consulted their physician, and soon started hormone treatment, which involved taking testosterone to support their transition. They also considered gender-affirming surgery, to remove their breasts. During the hearing, the parties referred to this as top surgery or chest surgery.

[24] At some point in late 2016 or early 2017, Ms. Moth told Ms. Olsen about Terry Wiebe’s plan to change their gender identity.

[25] In April 2017, Terry Wiebe was hospitalised due to kidney problems. The first time Terry Wiebe talked to Ms. Olsen about their plan to change their gender was shortly after they were discharged from hospital, in a conversation on the porch of the double-wide trailer. Terry Wiebe told Ms. Olsen they had started hormone treatment but now they were considering stopping it, because they believed, at that time, that the hormones were causing their kidney problems. They later received a medical opinion that there was no connection between the hormone treatment and the kidney problems, but they did not tell Ms. Olsen about this.

[26] Terry Wiebe says that during the conversation on the porch in April 2017, Ms. Olsen discouraged them from changing their gender, and said, “Why would you do that? You’re fine as a lesbian.” Ms. Olsen agrees she said, “you’re fine as a lesbian” but denies that she said this to discourage Terry Wiebe from changing their gender. She says she made the statement “in condolence to the fact they felt they had to stop taking hormones.”

[27] During the same conversation, Terry Wiebe says Ms. Olsen asked if they were considering top surgery, and Terry Wiebe said yes, to which Ms. Olsen responded, “you don’t need to mutilate your body.” Ms. Olsen denies this. She agrees that she talked to Terry Wiebe about whether they would get top surgery, and she was not supportive of it, but she says she never used the word “mutilation”.

[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. She said that if Terry Wiebe had gone ahead with the surgery, she would have asked them not to ask her to help care for them afterward. But Ms. Olsen never told Terry Wiebe about her traumatic feelings related to breast cancer and top surgery.

[29] Ms. Olsen said that when Terry Wiebe brought up their plan to change their gender, she shared her opinion that femininity is divine, and that changing their gender would not make Terry Wiebe happier. In an email to a mutual acquaintance, in January 2019, she summarised her response to Terry Wiebe’s plan to change their gender as follows:

I accept your decision but I will not celebrate it, as I feel that femininity is divine and I was raised by a lesbian feminist and I celebrate being a woman [and] I think it may not be the best decision for you, and not the underlying answer for your deep seated unhappiness/insecurities, and [it involves] dangerous medical procedures and hormone prescriptions with heavy risks.

[30] In the months after their conversation in April 2017, Terry Wiebe spoke to Ms. Olsen about their plan to change their gender again, on more than one occasion. On the evidence before us it is not clear how many other occasions there were, or exactly when they happened. On some of these occasions, Terry Wiebe says they asked Ms. Olsen if they would be able to continue living on her property, if they got top surgery, and Ms. Olsen did not say yes or no, but said she was uncomfortable with it or she did not support it. Terry Wiebe says she understood this to mean that Ms. Olsen did not support them getting top surgery, and would be uncomfortable with continuing the tenancy if they got top surgery.

[31] Terry Wiebe was hospitalised again in December 2017, while they were traveling in the Yukon. Ms. Olsen helped pay for Terry Wiebe to return to BC. Once again, Terry Wiebe suspected that their health problems were related to the hormone treatment, and they told Ms. Olsen they planned to stop taking hormones. But Terry Wiebe said they later received a medical opinion that their hospitalisation in December 2017 was unrelated to the hormones.

[32] On the evidence before us, it is not clear when Terry Wiebe stopped hormone treatment. They told Ms. Olsen and Ms. Moth they planned to stop after they were hospitalised in April 2017, and they told Ms. Olsen they would stop after they were hospitalised again in December 2017. Terry Wiebe's evidence to the Tribunal, however, was that they did not actually stop until later, and they ultimately stopped not because of any medical issues but because they believed Ms. Olsen would evict them if they continued on hormone treatment.

[33] In June 2018, Terry Wiebe told Ms. Olsen and Ms. Mason, who was also living on Ms. Olsen's property by that time, that they no longer planned to change their gender, and they would stop hormone treatment, because they did not like having facial hair.

[34] After June 2018, the parties had no further discussions about Terry Wiebe's plan to change their gender until Ms. Olsen evicted Terry Wiebe, in September 2018.

C. What Ms. Olsen said about Terry Wiebe's plan to change their gender

[35] There is some dispute about what Ms. Olsen said to Terry Wiebe, after they disclosed that they were planning to change their gender. There is also some dispute about the parties' later discussions in which Terry Wiebe brought up their gender identity. In this section we describe our findings of fact about these issues.

[36] We find it is more likely than not that Ms. Olsen used the term "mutilation", in reference to Terry Wiebe's contemplation of top surgery. Using this term would be consistent with Ms. Olsen's opinion about the divinity of femininity, and with her acknowledged discomfort with the idea of top surgery. In her testimony Ms. Olsen said she recalls being shocked when Terry Wiebe first talked about top surgery, and she felt like "a deer in the headlights". Based on this account of how she responded, we find that it is less likely that she would recall exactly what she said, or what she did not say. For these reasons we accept Terry Wiebe's testimony that, when they said they were considering top surgery, Ms. Olsen said, "you don't need to mutilate your body."

[37] Terry Wiebe says that in the following months, they repeatedly asked Ms. Olsen, "If I have chest surgery, am I safe on this property?" and Ms. Olsen would only say she was uncomfortable with it or she did not support it. They did not say exactly when they asked Ms. Olsen this question, but they say they brought it up over a dozen times, before June 2018. During the hearing, Ms. Olsen denied that Terry Wiebe asked about it that many times, or that they ever said, "If I do this, can I stay?"

[38] We accept that Terry Wiebe brought up their plan to get top surgery, in conversations with Ms. Olsen, on more than one occasion between April 2017 and June 2018. In light of Ms. Olsen not supporting their plan to change their gender, and describing top surgery as mutilation, it was natural for Terry Wiebe to be concerned about whether Ms. Olsen would allow them to continue living on her property if they went ahead with the surgery. We also consider the evidence from Ms. Olsen's mother, Nelle Maxey. In a sworn statement made

before the hearing, Ms. Maxey said Terry Wiebe constantly talked about their decision to change their gender, and expressed not feeling supported by others.

[39] It is unclear exactly how many conversations the parties had, in which Terry Wiebe asked what would happen to their tenancy if they got top surgery. It is also unclear when these conversations happened. Ms. Olsen brought up the issue rarely, if ever. We accept that Terry Wiebe brought it up more than once, between April 2017 and June 2018. We also accept that Ms. Olsen refused to answer their questions about whether they could stay on the property if they had top surgery, and only said she was uncomfortable with it, or she did not support it. This is consistent with her own description of herself as a passive person, who avoids confrontation.

[40] In summary, we find that Ms. Olsen told Terry Wiebe she did not support their decision to change their gender, and she would be uncomfortable if Terry Wiebe got top surgery. She described top surgery, on at least one occasion, as mutilation.

[41] We also find Terry Wiebe asked Ms. Olsen if they could stay on the property if they got top surgery, and Ms. Olsen did not confirm that they could but only said she would be uncomfortable with it or she would not support it. We find this happened a handful of times, between April 2017 and June 2018.

D. Deterioration of the parties' relationship

[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.

[43] Ms. Olsen had concerns about how Terry Wiebe responded to the end of their relationship with Ms. Moth. Ms. Olsen and Ms. Moth had been close for many years before Terry Wiebe met Ms. Moth. During Ms. Moth's testimony it was evident that she and Ms. Olsen remain close, and they are loyal to one another.

[44] Ms. Olsen testified that Terry Wiebe was irate and distraught about the breakdown of their relationship with Ms. Moth, to a degree that frightened her. She recalls Terry Wiebe

screaming about how they would “get back at” Ms. Moth, and having to counsel and console Terry Wiebe at length. In her testimony, Ms. Moth said that Terry Wiebe was distraught when Ms. Moth moved to another community and stopped spending time with them. She said that after the relationship broke down, Terry Wiebe demanded money from her, to compensate them for work they had done for Ms. Moth, including helping her move.

[45] At the hearing, Terry Wiebe said they could not recall saying those things, but they admitted that they struggled to get over the end of their relationship with Ms. Moth. We accept that Terry Wiebe was hurt and angered by the end of the relationship, and that they displayed that anger to Ms. Olsen, to a degree that frightened Ms. Olsen. We also accept that Ms. Moth told Ms. Olsen about Terry Wiebe’s actions towards Ms. Moth, when the relationship ended, and this added to Ms. Olsen’s concerns about Terry Wiebe’s behaviour.

[46] Ms. Olsen described another incident that occurred a few months later, around December 2017, which led her to lose trust in Terry Wiebe. Ms. Olsen was temporarily away from the property, and she had left Terry Wiebe in charge of the shop. During Ms. Olsen’s absence, the wrong storage tank was connected to a regulator vent into the shop. This harmed the products in the shop, and it could have caused serious health problems for Ms. Mason, who was working in the shop at the time.

[47] The witnesses were uncertain about how the wrong tank was connected to the vent. Terry Wiebe claimed that a supplier had delivered the wrong tank, but in a sworn statement made before the hearing, Ms. Olsen said she suspected that Terry Wiebe had deliberately connected the wrong tank, in order to make Ms. Mason look bad. In her testimony at the hearing, she said she did not know if they did it on purpose, but she still blamed Terry Wiebe for the problem, since they were responsible for the shop while Ms. Olsen was away.

[48] Ms. Olsen had installed security cameras on her property, and she says there should have been footage showing how the wrong tank was connected to the vent, and who connected it. But by the time she examined the footage, the relevant portion had been deleted. She suspected that Terry Wiebe was responsible for deleting it, but she did not know for sure.

[49] Ms. Olsen said this incident was a turning point, when she started to lose her trust in Terry Wiebe, and after this she never left them in charge of the shop again. But she admitted that she continued to employ them in the shop after this, at times.

[50] Terry Wiebe denies that they were responsible for connecting the wrong tank, or for deleting the security footage. They also say that at the time of the incident, Ms. Olsen told them she suspected someone else may have been responsible, and she reported that suspicion to the police.

[51] Even if Ms. Olsen suspected a different person was responsible for connecting the wrong tank, we accept her evidence that the incident made it more difficult for her to trust Terry Wiebe. There is no dispute that Terry Wiebe was responsible for the shop, while Ms. Olsen was away, and this potentially dangerous incident happened on their watch. We make no finding about who was responsible for the error, but we are satisfied that it contributed to Ms. Olsen's perception that Terry Wiebe was not reliable.

[52] Ms. Olsen referred to another incident, which took place around Christmas 2017. Ms. Stachelski was hosting a Christmas party in the single-wide trailer, where she was living with her boyfriend at the time. She had extended family visiting for the holidays, and she invited Ms. Olsen and her son, and Terry Wiebe, to join the party.

[53] At one point during the party, Terry Wiebe and Ms. Stachelski got in an argument. When Ms. Stachelski's boyfriend tried to intervene, Terry Wiebe turned on him and criticized him in a way that Ms. Stachelski described as "emasculating". The argument got worse, and it created an awkward situation for everyone at the party. Ms. Stachelski said it was especially upsetting for one of her younger family members who was in attendance.

[54] We accept that this incident contributed to Ms. Olsen's perception that Terry Wiebe was a volatile presence who created stress among the people living on her property.

[55] Both parties agree that the final straw, which led Ms. Olsen to ask Terry Wiebe to move off the property, was an incident involving Ms. Mason, in August or September 2018, while Ms.

Mason was living on Ms. Olsen's property. One day Ms. Mason borrowed Terry Wiebe's car to go visit a friend. Terry Wiebe became worried when Ms. Mason did not return when they expected her. They telephoned the police and local hospitals to inquire whether Ms. Mason had been involved in an accident. There had not been any accident but when Ms. Mason eventually returned, Terry Wiebe believed she was drunk, and had been driving drunk. This led to a serious argument between them. Ms. Olsen was present, and she described the argument as a "blowout". Both Ms. Olsen and Ms. Mason deny that Ms. Mason was drunk. Ms. Olsen believed Terry Wiebe's response, by calling the police and hospitals, and then getting so angry at Ms. Mason, was an over-reaction. Terry Wiebe maintains that Ms. Mason was drunk, and that their response was justified.

[56] After this incident, Ms. Mason stopped talking to Terry Wiebe. She told Ms. Olsen that she believed evicting Terry Wiebe was the right thing to do.

[57] We find this incident increased tension between the people living on the property, and we accept Ms. Olsen's evidence that it contributed to her concerns about Terry Wiebe. This does not mean we agree that Terry Wiebe over-reacted, as Ms. Olsen believed. But it is clear the incident had a profound impact on Ms. Olsen, who saw herself as caught in the middle between people in conflict. We also accept that, rightly or wrongly, Ms. Olsen blamed Terry Wiebe for the conflict.

[58] A few weeks after the incident with Ms. Mason, Ms. Olsen asked Terry Wiebe to move out.

[59] All the incidents described above were corroborated by multiple witnesses. Ms. Moth, Ms. Stachelski, and Ms. Mason all agreed with Ms. Olsen that Terry Wiebe became a source of stress for them, during 2017 and 2018. These witnesses also agreed with Ms. Olsen's perception that Terry Wiebe lacked boundaries in their relationship with Ms. Olsen. They gave examples of Terry Wiebe stopping vehicles that entered Ms. Olsen's property to find out who was visiting, and dropping by uninvited when Ms. Olsen had guests. Terry Wiebe acknowledged they sometimes did this, but said that no one ever discouraged them from doing it.

[60] We do not make any finding about who was at fault in these incidents, or whether Terry Wiebe's conduct was inappropriate. But based on the evidence of Ms. Olsen and her witnesses, we accept that in the year leading up to Ms. Olsen asking Terry Wiebe to move, Ms. Olsen came to believe that Terry Wiebe could not be trusted to display good judgment or good behaviour. As discussed below, we find this was the main reason she decided to evict them.

E. End of the tenancy

[61] On September 19, 2018, Ms. Olsen contacted Terry Wiebe by phone and asked them to move off the property within three months. Without Ms. Olsen's knowledge, Terry Wiebe recorded the phone call. Terry Wiebe says they did this because they have a disability that affects their memory, and they wanted to remember what Ms. Olsen said.

[62] In her testimony, Ms. Olsen said she first decided to ask Terry Wiebe to move out in early summer 2018, but there was a lag before she said anything to Terry Wiebe because she knew they would be upset, and it took time to build up the courage to act. Later in her testimony she said she did not make up her mind to ask them to move until after the "blowout" incident with Ms. Mason in August or September 2018. We accept that both these statements are true. Ms. Olsen described herself as a passive person who avoids conflict if possible, and all the evidence before us supports this. In particular, she repeatedly put off talking to Terry Wiebe about the increasing tensions that she perceived them to be causing, among Ms. Olsen and her friends and family.

[63] Based on Ms. Olsen's testimony, we accept that she decided to evict Terry Wiebe in early summer 2018, but she wavered in this decision, and she did not have the nerve to carry it out until the incident with Ms. Mason in August or September 2018.

[64] During the phone call on September 19, 2018, Ms. Olsen discussed some of the reasons she wanted Terry Wiebe to move. She said she had other plans for the space where Terry Wiebe's motorhome was located, and she was considering building a new shop there. She also said she was uncomfortable with some of Terry Wiebe's behaviour, and she referred to their "boundary issues". She did not give details about her plans, or her concerns, despite questions

from Terry Wiebe. Nor did she mention wanting to move her mother onto the property, although this was the reason she listed in a formal eviction notice she later gave to Terry Wiebe.

[65] During the recorded conversation, Terry Wiebe asked if their decision to change their gender was the reason Ms. Olsen wanted them to move, and Ms. Olsen acknowledged her discomfort with it. The conversation included the following exchange:

Terry Wiebe: ...Is it because of, you know, I had said I wanted to change my gender; is that what it's about?

Ms. Olsen: No, I mean, I feel like you would have resentment towards me about that, but that's not what it's about. You're not doing that, and I didn't want to be around that if you were.

Terry Wiebe: What do you mean I'm not doing it?

Ms. Olsen: Well, are you planning surgery?

Terry Wiebe: Does it matter?

Ms. Olsen: Well, you told me. I'm just going by what you said. You said you weren't. And I said I wasn't comfortable being around it.

Terry Wiebe: Well, you said you were, weren't comfortable—you said you didn't support it. You didn't say you weren't comfortable being around it. Because I kept saying, if you don't support it, what does that mean?

Ms. Olsen: No, I actually had said you—and we talked about it before. But that—I don't even know what you're doing, and I'm not making it about that.

[66] Later in the conversation, Ms. Olsen said Terry Wiebe had previously considered moving out. The conversation continued:

Ms. Olsen: ...I know you were looking at moving earlier. You were thinking about it and trying to find a place.

Terry Wiebe: Because you wouldn't give me an answer on whether you were, you know, like, whether I could stay or not if I was having surgery. Which, you know, I think is sort of a violation of my human rights, you know? Like, I am a human being, I can do to my body what I want to do

to my body, right? And if that means having chest surgery, that that's what that means. If it means having my gallbladder out or whatever, then that's what that means. I don't understand where you're coming from. Like, this—why don't you just be honest with me and tell me what this is really about?

Ms. Olsen: Well, it's all about behaviours and me not being comfortable and it's not working for me anymore.

[67] Terry Wiebe then asked for examples of the behaviours that Ms. Olsen was referring to. Ms. Olsen declined to give examples, saying she did not want to make it personal.

[68] Terry Wiebe asked Ms. Olsen for written notice to move out, and Ms. Olsen agreed to this. On September 25, 2018, she gave Terry Wiebe notice to move out by December 15, 2018, using a form created by BC's Residential Tenancy Branch [RTB]. The form said the reason for the eviction was because the rental unit would be occupied by the landlord or her close family member. Ms. Olsen says this was a reference to her plan to move her mother onto the space where Terry Wiebe's motorhome was located.

[69] Terry Wiebe then filed an application to the RTB to dispute the eviction, and the RTB scheduled a hearing for November 16, 2018.

[70] At the hearing, an RTB arbitrator declined jurisdiction, because they found that Terry Wiebe was not Ms. Olsen's tenant under either the *Residential Tenancy Act* [RTA] or the *Manufactured Home Park Tenancy Act* [MHPTA]. The arbitrator's decision to decline jurisdiction referred to an RTB policy guideline about distinguishing tenancy agreements from licenses to occupy property, which are not covered by the RHA or MHPTA. The arbitrator found the arrangement between the parties was more like a license to occupy property than a tenancy under the RTA or MHPTA.

[71] Upon receiving the RTB's decision, Ms. Olsen gave Terry Wiebe a new written notice to vacate the property, dated November 28, 2018. The notice described the parties' arrangement as a license to occupy, and it said Ms. Olsen was revoking permission for Terry Wiebe to live on her land. The notice said that if Terry Wiebe did not move out by January 31, 2019, Ms. Olsen

would file a writ of possession against them, to be enforced by a sheriff. Ms. Olsen also told Terry Wiebe, in a voice-mail message on November 25, 2018, that if they did not comply with her request to move, she would call a sheriff to force them out.

[72] Terry Wiebe applied for judicial review of the RTB arbitrator's decision to decline jurisdiction. In the Judicial Review Decision, the BC Supreme Court found the arbitrator's decision was patently unreasonable because the arbitrator did not consider relevant factors, and the hearing had not been procedurally fair to Terry Wiebe, because they had no notice that the arbitrator might find the RTB had no jurisdiction.

[73] The Court ordered a new RTB hearing, to determine whether Terry Wiebe was Ms. Olsen's tenant, under the RTA or MHPTA or at all. A new hearing was scheduled, but by that time Terry Wiebe had already moved off the property. At the new hearing, the RTB arbitrator declined to make any finding about whether Terry Wiebe was Ms. Olsen's tenant, under the RTA or MHPTA, because the issue was moot.

[74] Terry Wiebe moved out on December 31, 2018. The move-out process was complex. The motorhome had to be towed off the property. As the Court described it, at para. 22 of the Judicial Review Decision:

It took [Terry Wiebe] approximately two weeks, and the assistance of four other people, to dismantle and move the motorhome from the Property. [Terry Wiebe] incurred expenses dismantling and moving the structures they had built around the motorhome, as well as expense in moving the motorhome itself. [Terry Wiebe] was unable to move the outhouse, which remains on the Property. [Terry Wiebe] was unable to remove the power and water lines that they had paid for and installed.

[75] The parties had few, if any, further communications, after Terry Wiebe moved off the property, until they filed this human rights complaint.

F. Ms. Olsen's reasons for the eviction

[76] Ms. Olsen says the main reason she decided to evict Terry Wiebe was her concern about their volatile behaviour. She says she also had other reasons for wanting to evict Terry Wiebe,

including her belief that Terry Wiebe was responsible for her property becoming unsightly, her desire to move her mother onto the property, and her plan to apply for a new type of business license, that would require her to redevelop or make some other use of some of the land where Terry Wiebe's motorhome was located. She did not discuss these reasons with Terry Wiebe before she asked them to move out.

[77] Ms. Olsen says she did not tell Terry Wiebe about her plan to move her mother to the property, because she did not want them to blame her mother for the eviction, and she did not feel it was necessary to give them all the reasons she wanted them out. But she said she and her mother had always planned to live on the same property, as her mother aged, so that Ms. Olsen could care for her. Her mother also testified that she and Ms. Olsen had always planned to move closer together, as she grew older.

[78] When Terry Wiebe moved out, Ms. Olsen's mother was living on her own, in a community not far away from Ms. Olsen's property. She moved onto Ms. Olsen's property in the summer of 2019. She currently lives in a travel trailer, on the same part of the property where Terry Wiebe's motorhome was previously located.

[79] Ms. Olsen says another reason she evicted Terry Wiebe was because she was considering applying for a new type of business license, and she thought she might need part of the land where their motorhome was located to build a new shop, to qualify for the license. She brought up this issue, briefly, during the conversation with Terry Wiebe on September 19, 2018, when she first asked them to move out.

[80] Ms. Olsen did not proceed with her plan to apply for a new business license. She says the economics of her business changed, after the eviction, and it would not have been economically feasible for her to invest in the new facilities she would need in order to get the license.

[81] We accept that Ms. Olsen had considered building a new shop on the land where Terry Wiebe's motorhome was located. But it is clear that her plans to build a new shop were preliminary. At the time when she asked Terry Wiebe to move, she had not taken any steps to

determine if building the new shop, in that location, was necessary in order to get the license she was interested in. Nor had she had taken any steps to determine whether building the new shop was economically feasible. We are not satisfied that this was a significant factor in the decision to evict Terry Wiebe.

[82] Ms. Olsen says another reason she evicted Terry Wiebe was because they were responsible for making the property more unsightly. She says the property was becoming cluttered with their possessions and materials related to their recycling business.

[83] There is no evidence before us that Ms. Olsen ever told Terry Wiebe about her concerns about unsightliness. Ms. Olsen did not explain why she did not bring these concerns to Terry Wiebe's attention, before she evicted them. None of the documents filed with the RTB refer to unsightly premises. Nor do either of the eviction notices, which Ms. Olsen gave to Terry Wiebe in September and November 2018.

[84] In a sworn statement made before the hearing, Ms. Olsen provided photographs depicting the allegedly unsightly parts of the property, but she did not discuss them during the hearing. We reviewed the photographs but on their own they do not establish that any part of the property was unsightly, or that Terry Wiebe was responsible for the alleged unsightliness.

[85] It is difficult to assess how much these factors—the allegedly unsightly premises, moving her mother onto the property, and her plans to build a new shop—influenced Ms. Olsen's decision to ask Terry Wiebe to move. There is limited evidence before us about the connections between these reasons and the decision to evict Terry Wiebe. We accept that Ms. Olsen had multiple reasons for wanting to evict them, but on the evidence before us we are unable to determine how much weight each reason had in Ms. Olsen's decision-making process.

[86] The fact that Ms. Olsen had concerns about Terry Wiebe's conduct and judgment was corroborated by Ms. Olsen's witnesses. We make no finding about whether these concerns were justified, but we find they were genuine. We are satisfied that they were the overriding

reason for the eviction, and we find that Ms. Olsen would most likely have evicted Terry Wiebe based on these concerns, even if she had no other reason to evict them.

III DECISION

[87] Section 10 of the *Code* applies to tenancies. Section 10(1) says:

A person must not

(a) deny to a person or class of persons the right to occupy, as a tenant, space that is represented as being available for occupancy by a tenant, or

(b) discriminate against a person or class of persons regarding a term or condition of the tenancy of the space,

because of the...gender identity or expression...of that person or class of persons.

[88] To prove discrimination under s. 10 of the *Code*, Terry Wiebe must prove:

- a. They had a tenancy relationship with Ms. Olsen, within the meaning of s. 10 of the *Code*;
- b. They experienced an adverse impact regarding a term or condition of their tenancy; and
- c. Their gender identity or expression was a factor in the adverse impact they experienced.

Moore v. British Columbia (Education), 2012 SCC 61 at para 33.

[89] We now set out our decision about the issues in dispute. We first address whether the parties' relationship was a tenancy under the *Code*. Since we find that it was, we go on to consider whether Ms. Olsen's conduct had an adverse impact, or negative effect, on Terry Wiebe's tenancy, and whether their gender identity or expression was a factor in the adverse impact. In particular, we address whether Ms. Olsen's response to Terry Wiebe's plan to change

their gender had an adverse impact on their tenancy, and whether their gender, or their plan to change their gender, was a factor in Ms. Olsen’s decision to evict them.

A. The parties’ relationship was a tenancy under the Code

[90] Terry Wiebe says they had a tenancy with Ms. Olsen. They say Ms. Olsen had control over the place where they lived, and they made payments to her—in money or labour for her business—in exchange for keeping their motorhome on her property.

[91] Ms. Olsen denies that there was a tenancy within the meaning of s. 10 of the *Code*. She says Terry Wiebe lived on her property under an informal arrangement between friends. She says she allowed Terry Wiebe to occupy the property, but this did not create a tenancy relationship.

[92] For the following reasons, we find there was a tenancy within the meaning of the *Code*.

[93] The *Code* does not define what makes a tenancy. The Tribunal interprets “tenancy” broadly, to ensure that s. 10 achieves its broad public purpose: *McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39 at para. 17. The Tribunal has found s. 10 of the *Code*

...is a legislative recognition that equity-seeking groups have long been excluded and marginalized from the housing market, and that safe and secure housing is a necessary component of full and free participation in economic, social, political and cultural life... Section 10 prohibits persons from excluding or treating people adversely in relation to a tenancy because of characteristics protected by the *Code*—characteristics marked by longstanding patterns of exclusion and consequent social inequality.

Vik v. Finamore (No. 2), 2018 BCHRT 9 at para. 58 (citations omitted)

[94] Given the different purposes of the legislation, the Tribunal has found that whether the RTA or MHPTA may apply is not determinative of whether there is a tenancy under the *Code*: *Brooks v. Skyacres Turkey Ranch Ltd. and others (No. 2)*, 2022 BCHRT 73 at para. 219; *Montgomery-Caplette v. Goldy Kang Real Estate Group and others*, 2024 BCHRT 172 at para. 32. Even a relationship that the RTB characterises as a license to occupy could still be a tenancy relationship under the *Code*.

[95] In *McCulloch v British Columbia (Human Rights Tribunal)*, 2019 BCSC 624, the BC Supreme Court said that in deciding whether s. 10 applies to allegedly discriminatory conduct, the Tribunal must conduct a contextual analysis that considers all relevant circumstances: *McCulloch* at para. 130.

[96] In *McCulloch*, the Court cited *British Columbia Human Rights Tribunal v. Schrenk* [*Schrenk*], 2017 SCC 62, and set out some of the factors the Tribunal should consider, including whether the respondent had control over the complainant's living space, whether the discriminatory conduct occurred there, and whether the complainant's tenancy or living space was negatively affected by the respondent. Other relevant factors include whether there was payment of rent, whether the tenancy had a pre-agreed term or some degree of permanence, and whether the parties intended to create a tenancy relationship: *Hall v. The Salvation Army and another*, 2021 BCHRT 78 at para. 38.

[97] We now turn to applying the legal principles set out above to the facts of this matter. We address the factors set out in *Hall*, *McCulloch*, and other cases, to determine whether Terry Wiebe has established that their relationship with Ms. Olsen was a tenancy within the meaning of the *Code*.

1. *Payment of rent and term of arrangement*

[98] Although Ms. Olsen did not initially ask for rent, there is no dispute that Terry Wiebe made payments in return for keeping their motorhome on the property, in money or in work at Ms. Olsen's business. The exchange of money or services for lodging supports a finding that there was a tenancy under the *Code*: *Oloresisimo v. Oloresisimo-Esquivel and Esquivel*, 2005 BCHRT 64 at para. 17.

[99] The parties' conduct, before Ms. Olsen evicted Terry Wiebe, supports a finding that they intended for Terry Wiebe to live on Ms. Olsen's property for an indefinite time. When Terry Wiebe first moved onto Ms. Olsen's property, there was no discussion of how long they would stay. Until shortly before Ms. Olsen asked them to leave the property, Terry Wiebe believed that they could stay "forever", which we interpret to mean as long as they wanted.

[100] Ms. Olsen denies that she ever told Terry Wiebe they could stay on the property forever, and she testified that Terry Wiebe's belief that they could stay forever was not in line with reality. But she admitted that Terry Wiebe occasionally asked her if they would ever have to move, and she said, no, not unless I move.

[101] The steps Terry Wiebe took to make the motorhome more permanent and comfortable were consistent with a belief that they could stay indefinitely. Terry Wiebe invested significant expenses in turning the motorhome into their permanent home, and the steps they took to do so made the motorhome undriveable. Ms. Olsen did not object to any of these steps, and she encouraged some of them, by allowing Terry Wiebe to hook up their motorhome to utilities, including electricity and water, from other buildings on Ms. Olsen's property.

[102] For these reasons, we accept that for most of the time Terry Wiebe lived on Ms. Olsen's property, both parties intended it to be for an indefinite term. We find both parties accepted their arrangement would have a degree of permanency. This factor supports a finding that there was a tenancy, under s. 10 of the *Code*. Along with their payment of rent, it shows that Terry Wiebe had reasonably safe and secure housing on Ms. Olsen's property, on a long-term basis.

2. The parties' intentions to create a tenancy

[103] There was never any written agreement between the parties, and there is no evidence they ever discussed the legal nature of their arrangement before September 2018. Whether they intended to create a tenancy relationship must be inferred from their conduct.

[104] Ms. Olsen says her relationship with Terry Wiebe was one of licensor and occupant. In her arguments in the judicial review of the RTB's initial decision, Ms. Olsen cited an RTB policy guideline that says, among other things, that if parties have a personal relationship, and occupancy is granted because of generosity rather than business considerations, this may weigh against a finding that there was a tenancy. She says this describes her relationship with Terry Wiebe, as evidenced by the low amount of rent she charged, and her willingness to let Terry Wiebe hook up to her utilities and run their recycling business on her property.

[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. But their friendly relationship, on its own, does not mean Terry Wiebe was not Ms. Olsen's tenant. We note that Ms. Olsen also had close and friendly relationships with Ms. Stachelski and Ms. Mason, but she testified that she still thought of them as her tenants.

[106] Ms. Olsen says her relationship with her other tenants, like Ms. Stachelski and Ms. Mason, was different from her relationship with Terry Wiebe. She had written tenancy agreements with her tenants in the single-wide trailer, and she was responsible for ensuring the appliances in the single-wide were maintained, and fixing anything that broke, while her tenants lived there. By contrast, Terry Wiebe was responsible for maintaining their own appliances and fixing anything that went wrong in the motorhome. Terry Wiebe does not dispute this, and we accept that in this sense Ms. Olsen's relationship with Terry Wiebe was different than her relationship with the other people living on her property.

[107] However, the fact that Ms. Olsen was not responsible for maintaining the interior of the motorhome does not necessarily support a finding that her relationship with Terry Wiebe was based solely on friendship. It could also show that she was concerned about respecting Terry Wiebe's privacy. The parties agreed that Ms. Olsen rarely, if ever, entered the motorhome. She only approached it occasionally, to have conversations with Terry Wiebe at the entrance of the motorhome. We find that Terry Wiebe's exclusive possession over the interior of the motorhome undermines Ms. Olsen's claim that Terry Wiebe's motorhome was on her property under an informal arrangement between friends. It shows that she took Terry Wiebe's rights in the motorhome seriously.

[108] In the context of this complaint, the language Ms. Olsen used to describe Terry Wiebe is relevant to the parties' intentions. Terry Wiebe says Ms. Olsen introduced them to others as her tenant. Ms. Olsen disputes this—she says she referred to Terry Wiebe as her friend, who lived in a motorhome on her property. But even if she did describe Terry Wiebe as her tenant, she says this description, used in casual conversations, does not determine the nature of their legal relationship.

[109] In her submissions to the RTB in 2018, Ms. Olsen referred to Terry Wiebe as her tenant, herself as a landlord, and the arrangement between them as a tenancy: Judicial Review Decision at para. 13. We also consider that when Terry Wiebe asked for written notice of the eviction, Ms. Olsen used an RTB form that referred to their relationship as a landlord-tenant relationship. Based on these factors, we find it is more likely than not that Ms. Olsen also described Terry Wiebe as her tenant when speaking to others, at least occasionally. We agree with Ms. Olsen that this factor, on its own, is not determinative of whether there was a tenancy under the *Code*, but it is relevant. It supports a finding that, while there was a friendly relationship between the parties for much of the time Terry Wiebe lived on the property, Ms. Olsen also thought of their relationship, at least in part, as a tenancy.

[110] Not surprisingly, the parties did not talk about the legal nature of their relationship until Ms. Olsen decided to evict Terry Wiebe. But their conduct in the years before that, viewed as a whole, supports a finding that they intended the relationship to be a form of tenancy relationship.

3. McCulloch factors

[111] Turning to the factors listed in *McCulloch*, there is no dispute that Ms. Olsen did not have control over the interior of Terry Wiebe's living space. As noted, she never entered the motorhome, and she was not responsible for maintaining it, as she was for her other tenants. Terry Wiebe had exclusive possession of the motorhome.

[112] However, Ms. Olsen did have control over the land where the motorhome was parked. She owned the land, and she asserted her right to control it when she asked Terry Wiebe to

move the motorhome off the land, and when she later threatened to have a sheriff evict them. In this sense, her actions had a negative effect on Terry Wiebe's living space and their ability to continue living there.

[113] Terry Wiebe was in a position of vulnerability relative to Ms. Olsen. Their vulnerability was mitigated, to some extent, by the friendly relationship between the parties. In this regard we consider that at the beginning of the tenancy, Ms. Olsen did not ask for Terry Wiebe to pay any rent, and the parties eventually agreed Terry Wiebe would pay only a modest amount of rent. But the parties' friendly relationship, during most of the time Terry Wiebe lived on the property, does not change the fact that Ms. Olsen owned the property and had the ability to evict them. This fundamental power imbalance between the parties made Terry Wiebe vulnerable to the effects of discriminatory conduct by Ms. Olsen.

4. Conclusion

[114] In assessing whether the parties' relationship was a tenancy under the *Code*, we find the most important factors are:

- a. The parties agreed that Terry Wiebe could park their motorhome on Ms. Olsen's property, in return for payment;
- b. Terry Wiebe took steps to make the motorhome into a permanent structure that they planned to live in indefinitely, with Ms. Olsen's consent;
- c. The parties' conduct shows that they intended their relationship to involve at least some legal rights consistent with a tenancy relationship, like the right to exclusive possession; and
- d. Ms. Olsen had control over Terry Wiebe's housing and exercised that control to force them to move off the property.

[115] Considering these factors, we find the parties' relationship was a tenancy within the meaning of s. 10 of the *Code*.

B. Ms. Olsen’s conduct had an adverse impact on Terry Wiebe’s tenancy

[116] Having found that the parties had a tenancy relationship, we now address whether Ms. Olsen discriminated against Terry Wiebe regarding the tenancy, before the eviction.

[117] Terry Wiebe says Ms. Olsen made anti-trans statements, which had a negative effect on their tenancy. These statements included Ms. Olsen saying “you’re fine as a lesbian”, and her reference to top surgery as “mutilation”. We also consider the adverse impact of Ms. Olsen’s responses to Terry Wiebe’s questions about whether their tenancy was safe if they got top surgery, when Ms. Olsen said she was not comfortable with it or she would not support it.

1. Ms. Olsen’s statements about Terry Wiebe changing their gender

[118] We begin by addressing Ms. Olsen’s statements that Terry Wiebe was “fine as a lesbian” and that top surgery was “mutilation”. For the following reasons, we find that these statements, while they may have been anti-trans, were not sufficiently connected to Terry Wiebe’s tenancy to establish discrimination under the *Code*.

[119] Despite her denial, we have found that Ms. Olsen referred to top surgery as mutilation. We accept Terry Wiebe’s submission that this could be seen as transphobic. The Tribunal has found that characterising medically-based, gender-affirming procedures as “mutilation” can expose transgender people to hatred and contempt: *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 at para. 161.

[120] Transgender people face unique forms of discrimination in society. They are stereotyped as diseased or confused, and they are disadvantaged relative to the general public in housing, among other areas of life: *Hansman v. Neufeld*, 2023 SCC 14 at paras. 84 to 86. Statements like Ms. Olsen’s, suggesting that gender-affirming surgery is unnecessary or inherently harmful, reinforce stigma against transgender people. Despite recent gains in the fight for equality, transgender people continue to find their very existence is the subject of public debate, and they still have to face the view that they are less worthy of dignity, respect,

and rights: *Oger* at para. 61. Calling top surgery “mutilation” reinforces this discriminatory perspective.

[121] Depending on the context, Ms. Olsen’s statement that Terry Wiebe was “fine as a lesbian” could also be seen as transphobic, but the context is in dispute: Terry Wiebe says Ms. Olsen said this to discourage them from changing their gender, while Ms. Olsen says she made the statement to console Terry Wiebe, after they told her they planned to stop hormone treatment, because they believed it was responsible for their health problems. We find it is not necessary to resolve this dispute because even if Ms. Olsen intended to discourage Terry Wiebe from changing their gender, this discussion was not sufficiently connected to Terry Wiebe’s tenancy to establish discrimination under the *Code*.

[122] Section 10 of the *Code* prohibits discrimination against a person when that discrimination has a sufficient connection to the tenancy context. To determine whether there is a sufficient connection, the Tribunal conducts a contextual analysis that considers all the relevant circumstances: *Schrenk* at para. 67. As noted above, relevant factors in the tenancy context may include whether the respondent had control over the complainant’s living space, whether the discrimination took place in the complainant’s living space, and whether the complainant’s tenancy or living space was negatively affected: *McCulloch* at para. 130.

[123] We have already found that Ms. Olsen had control over Terry Wiebe’s living space, in the sense that she owned the property where their motorhome was parked, and ultimately exercised her control to force Terry Wiebe to move off the property. But her statements that top surgery is “mutilation” and Terry Wiebe was “fine as a lesbian” did not take place in Terry Wiebe’s living space—they were made in a conversation on the front porch of Ms. Olsen’s double-wide trailer. We accept that these statements had a negative effect on Terry Wiebe’s relationship with Ms. Olsen, but that does not necessarily mean they had a negative effect on their tenancy. The tenancy relationship between the parties was only one aspect of their relationship, and not everything that transpired in their personal relationship was connected to the tenancy.

[124] As in *Brooks*, in this case there are no “bright lines” separating the parties’ landlord-tenant relationship, which is subject to the *Code*, from the relationship between two friends, which is not: *Brooks* at paras. 187 to 188 and 194 to 198. If there is not a sufficient connection to the tenancy context—because the comments were made in the context of the friendship between the parties—there is no violation of the *Code*.

[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. Ms. Olsen’s statements to the effect that “you’re fine as a lesbian” and that top surgery was “mutilation” were made during one of those conversations, when Terry Wiebe was in the process of coming out as transgender to Ms. Olsen. We understand how these statements were hurtful for Terry Wiebe, but the context in which they were made suggests they were related to the parties’ personal relationship, rather than their tenancy.

[126] In these circumstances, we find Ms. Olsen’s reference to mutilation was part of a personal discussion, between friends, rather than an issue related to the tenancy. If it was sufficiently connected to the tenancy, it would be unacceptable, and it could lead to a finding of discrimination under the *Code*. But in the absence of that connection, although the comment was objectionable, it was not discrimination under the *Code*.

[127] Similarly, Ms. Olsen’s statement that “you’re fine a lesbian” was made in the context of the parties’ close friendship. For this reason it is unnecessary for us to decide whether the statement should be characterised as discouraging Ms. Olsen from changing their gender, or consoling them because they planned to stop hormone treatment. Even if it was the former, the statement was not sufficiently connected to the parties’ tenancy relationship, so it would not be discrimination under the *Code*.

[128] In our view, these statements were part of frank, unguarded conversations between friends. In the circumstances of this case, the relationship between friends cannot be cleanly separated from their landlord-tenant relationship, but the context of these discussions does not suggest a connection to the tenancy. Ms. Olsen’s statements had a negative effect on the friendship between the parties, but we are not satisfied that they adversely impacted Terry Wiebe’s tenancy.

2. Terry Wiebe’s questions about whether they could stay on the property if they changed their gender

[129] We have found that Terry Wiebe asked Ms. Olsen if they could stay on the property even if they had top surgery, and Ms. Olsen did not confirm that they could but only said she would be uncomfortable with it or she would not support it. We accept that this happened a handful of times, between April 2017 and June 2018.

[130] We find it was reasonable for Terry Wiebe to infer from this that they would not be able to stay on the property if they got top surgery. Although Ms. Olsen did not explicitly say she would end the tenancy if Terry Wiebe did so, her failure to confirm the tenancy would continue, and her statement that she would be uncomfortable with it, could be interpreted as telling Terry Wiebe that she might end the tenancy, if they got top surgery.

[131] Unlike Ms. Olsen’s statement about mutilation and that Terry Wiebe was “fine as a lesbian”, her response to their questions about whether they could stay on the property if they got top surgery was connected to the tenancy. The questions were explicitly about the tenancy.

[132] The issue we must decide is whether this had an adverse impact on the tenancy. Under the *Code*, a tenant’s right to “quiet enjoyment” of their residence includes the right to be free from discriminatory harassment: *Friedmann v. MacGarvie*, 2012 BCCA 445 at para. 28. In cases where an alleged adverse impact is based on negative comments or harassment, the Tribunal will consider all the circumstances to determine whether it violates the *Code*, including “the egregiousness or virulence of the comment, the nature of the relationship between 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.”: *Pardo v. School District No. 43*, 2003 BCHRT 71 at para. 12; *Brito v. Affordable Housing Societies and another*, 2017 BCHRT 270 at para. 43. We now address the relevant circumstances.

i. Relationship between the parties

[133] We find the relationship between the parties supports a finding that Ms. Olsen’s response to Terry Wiebe, when Terry Wiebe asked about if their tenancy was safe, had an adverse impact on the tenancy. As previously discussed, there was a power imbalance between the parties: Ms. Olsen was in the position of a landlord, and had the ability to control whether Terry Wiebe would be able to continue living in their home.

[134] Although the parties were close friends during most of Terry Wiebe’s tenancy, by the time Terry Wiebe asked whether they could stay on the property if they got top surgery, their friendship was starting to deteriorate. We accept that they asked if they could stay on the property, if they got top surgery, because they felt they could no longer rely on their friendship with Ms. Olsen. This was not part of a frank, unguarded conversation between friends; it was more like a tenant asking a landlord if their lease would be renewed.

ii. Context of the comments and lack of an apology

[135] The context for the comments includes Terry Wiebe’s feeling of insecurity about whether they would be able to continue living in the place they considered their long-term home. In this sense the stakes were high, in terms of both their housing and their gender identity.

[136] The context also includes the fact that Ms. Olsen was not merely acting on the spur of the moment when she told Terry Wiebe she would be uncomfortable if they had top surgery while living on the property. By the time Terry Wiebe asked her what would happen to their tenancy if they got top surgery, Ms. Olsen had had an opportunity to reflect on how she felt about Terry Wiebe’s gender identity. Her response was deliberate. There is no evidence that she considered apologising to Terry Wiebe for it.

[137] Although we have found that Ms. Olsen’s statements about “mutilation” and that “you’re fine as a lesbian” do not have a sufficient connection to the tenancy to establish a breach of the *Code*, we still find them relevant to the context for Ms. Olsen’s later conduct. They contributed to Terry Wiebe’s feeling of insecurity and their desire for certainty about whether they would be allowed to continue living in their home if they went ahead with top surgery. From Terry Wiebe’s perspective, Ms. Olsen’s refusal to confirm they could stay meant their housing was in danger. This was a serious matter for them.

[138] This factor supports a finding that Ms. Olsen’s response to Terry Wiebe’s questions about whether they could stay on the property if they got top surgery had an adverse impact on their tenancy.

iii. Egregiousness or virulence

[139] While Ms. Olsen’s response to Terry Wiebe’s questions about whether they could stay on the property if they got top surgery had a negative effect on them, Ms. Olsen’s comments themselves were not especially egregious. Her expression of discomfort with the idea of Terry Wiebe changing her gender, and her failure to reassure them that they could stay on her property, are not as egregious as, for example, a slur against transgender people, or active harassment related to a person’s gender identity.

[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. This does not change the effect that Ms. Olsen’s response to Terry Wiebe’s questions had on Terry Wiebe, but we accept that it makes Ms. Olsen’s conduct less egregious.

[141] We find this factor does not support a finding that Ms. Olsen’s response to Terry Wiebe’s questions had an adverse impact on their tenancy.

iv. Historical discrimination against transgender people

[142] We have already noted the unique forms of discrimination faced by transgender people in Canadian society. The Supreme Court of Canada has recognised that the history of transgender people is marked by discrimination and disadvantage: *Hansman* at para. 84. They remain among the most marginalised people in society: *Oger* at para. 62. Ms. Olsen’s response to Terry Wiebe’s questions about whether they could stay on the property if they changed their gender perpetuated that disadvantage and marginalisation, for Terry Wiebe. This factor supports a finding that Ms. Olsen’s response to Terry Wiebe’s questions had an adverse impact on their tenancy.

v. Conclusion

[143] Considering all the circumstances, including the factors set out in *Pardo*, we are satisfied that Ms. Olsen’s response to Terry Wiebe’s questions about the future of their tenancy had an adverse impact on the tenancy, by making them feel insecure in their living space, given Ms. Olsen’s views about top surgery. Although the words Ms. Olsen used, in response to Terry Wiebe’s questions, were not particularly egregious, they had a serious and harmful impact on Terry Wiebe, which was connected to their tenancy.

[144] This means Terry Wiebe has established that Ms. Olsen discriminated against them, contrary to s. 10 of the *Code*. Next we will address whether the eviction was part of the discrimination.

C. Terry Wiebe’s gender identity was not a factor in the eviction

[145] Terry Wiebe says their plan to change their gender, and Ms. Olsen’s discomfort with that plan, was a factor in Ms. Olsen’s decision to evict them. Ms. Olsen denies this. She says she had several reasons for deciding to evict Terry Wiebe, and none of them were connected to their gender identity or expression.

[146] Terry Wiebe has the burden of proving their gender identity was a factor in the adverse impact on them. For the following reasons, we find they have not met this burden. They have

not established, on a balance of probabilities, that their gender identity, or their plan to change their gender, was a factor in Ms. Olsen’s decision to evict them.

[147] We accept that Ms. Olsen’s conduct discloses some basis for an inference that her decision to evict Terry Wiebe was connected to their gender identity. She admitted that she was uncomfortable with the idea of top surgery, for reasons related to her mother’s medical history. She made a transphobic statement when she referred to top surgery as “mutilation”. She made Terry Wiebe believe their tenancy was in danger if they got top surgery.

[148] However, Ms. Olsen has rebutted the inference that her decision to evict Terry Wiebe was connected to their gender identity by providing a non-discriminatory explanation for the decision. We accept that the eviction was due to Ms. Olsen’s concerns about Terry Wiebe’s volatile behaviour interfering with her own relationships. The conduct that Ms. Olsen was concerned about started in the summer of 2017, when Terry Wiebe’s relationship with Ms. Moth broke down, continued with the dangerous incident in the shop, in December 2017, and Terry Wiebe’s dispute with Ms. Stachelski at Christmas 2017, and culminated in their “blow-up” with Ms. Mason in August or September 2018. Despite the relatively small number of incidents of conflict described by the witnesses, we are satisfied that they had a significant effect on Ms. Olsen, as she felt she was repeatedly stuck in the middle of conflicts among her tenants and friends.

[149] We have considered the overlap in time between Terry Wiebe’s plans to change their gender and the deterioration in the relationship between the parties. Terry Wiebe first told Ms. Olsen about their plan to change their gender in April 2017, and brought it up again in the following months. Ms. Olsen’s concerns about their volatile behaviour coincide with this period: Ms. Olsen referred to incidents in summer 2017 and December 2017, in explaining why her relationship with Terry Wiebe deteriorated during this time. This overlap tends to support an inference that their gender identity was a factor in the eviction.

[150] Looking at the sequence of relevant events as a whole, however, we are not satisfied that the overlap in time, between Terry Wiebe’s plan to change their gender and the

deterioration in the parties' relationship, is sufficient to establish a connection between Terry Wiebe's gender identity and the eviction. Ms. Olsen first learned of Terry Wiebe's plan to change their gender from Ms. Moth, in late 2016 or early 2017, at least 18 months before the eviction. The long gap in time between when Ms. Olsen learned that Terry Wiebe planned to change their gender and when Ms. Olsen evicted them, suggests their plan to change their gender was not a factor in the eviction. Terry Wiebe has not explained how a connection between their gender identity and the eviction could be established, considering the gaps in time between their discussions with Ms. Olsen about their gender identity and the eviction.

[151] There is no dispute that the last time the parties discussed Terry Wiebe's plan to change their gender, before the eviction, was in June 2018. At that time Terry Wiebe told Ms. Olsen they did not plan to go through with it, because they did not like having facial hair. While Ms. Olsen said she first decided to evict Terry Wiebe in early summer 2018, there is no evidence before us that she was concerned about Terry Wiebe's plan to change their gender at that time. As far as Ms. Olsen knew, that plan was off, in early summer 2018.

[152] In her testimony, and in previous statements, Ms. Olsen gave multiple reasons why she decided to evict Terry Wiebe. Some of those reasons—like the fact that she had concerns about their judgment and behaviour and her motivation to move her mother onto the property—are supported by the evidence. Others—like the alleged unsightliness of the premises and her plans to build a new shop—are not so well supported. Nevertheless, we accept that she considered multiple factors in making her decision to evict Terry Wiebe.

[153] Although we do not accept all Ms. Olsen's stated reasons for wanting to evict Terry Wiebe, this does not undermine her denial that their gender identity was a factor. We accept that the parties' relationship broke down, over the course of several months, for multiple reasons, especially Ms. Olsen's concerns about Terry Wiebe's behaviour and lack of boundaries. We also accept she had additional reasons for wanting to evict Terry Wiebe. Some of those reasons are not grounded in the evidence before us, but this lack of evidence is not enough to establish that Ms. Olsen was concealing other reasons, connected to Terry Wiebe's gender identity.

[154] The strongest support for an inference that Terry Wiebe's gender identity was a factor in the eviction comes from Ms. Olsen's responses to Terry Wiebe's questions about whether they could continue to live on the property if they got top surgery. By telling Terry Wiebe she was not comfortable with this, when Terry Wiebe asked her if they would be allowed to stay, Ms. Olsen gave Terry Wiebe the impression that they could be evicted due to their gender identity.

[155] However, Terry Wiebe has proven only that there were a handful of conversations, over a period of about a year, in which Ms. Olsen said she would be uncomfortable having Terry Wiebe on the property if they got top surgery. The evidence before us does not suggest that the possibility of Terry Wiebe getting top surgery overshadowed the relationship between the parties during this year. During that same year, Ms. Olsen continued to support Terry Wiebe in other ways, such as when she helped them return from the Yukon when they were hospitalised in December 2017.

[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.

[157] We understand why Terry Wiebe believes their gender identity was a factor in the eviction, in light of Ms. Olsen's acknowledged discomfort with the idea of them changing their gender. They did not realise the extent of Ms. Olsen's concerns about their behaviour because Ms. Olsen, a passive person who avoids confrontation, was not open with them about her concerns.

[158] However, viewing the evidence as a whole, we are not satisfied, on a balance of probabilities, that the eviction was connected to Terry Wiebe's plan to change their gender. Ms. Olsen had multiple reasons for wanting to evict them. Terry Wiebe has not proven that their gender identity was among them.

D. Summary of Ms. Olsen's liability

[159] Ms. Olsen violated s. 10 of the *Code* by discriminating against Terry Wiebe, regarding their tenancy, because of their gender identity and expression. We find that Terry Wiebe experienced an adverse impact in their tenancy as a result of Ms. Olsen's response to their questions about the future of their tenancy if they got top surgery.

[160] We do not find that Ms. Olsen violated the *Code* when she evicted Terry Wiebe. We dismiss their allegation that the eviction was discriminatory.

IV REMEDIES

[161] Having found that Terry Wiebe's complaint was justified, in part, we must order Ms. Olsen to cease the contravention of the *Code* and refrain from committing a similar contravention: s. 37(2)(a) of the *Code*.

[162] We now address Terry Wiebe's request for orders for compensation for expenses incurred because of the discrimination, and for injury to their dignity.

A. Expenses incurred

[163] Under s. 37(2)(b)(ii) of the *Code*, if the Tribunal finds a complaint is justified, it may order compensation for expenses incurred as a result of the discrimination. Terry Wiebe requests compensation for the materials and labour they invested in the motorhome, before the eviction, in order to make the motorhome more comfortable and permanent. They also request compensation for the cost of moving the motorhome off the property, after Ms. Olsen evicted them. For the following reasons, we decline to order compensation for these expenses.

[164] Terry Wiebe's request for compensation is based on their allegation that Ms. Olsen evicted them for discriminatory reasons, but we have concluded the eviction was not discriminatory. Ms. Olsen discriminated against Terry Wiebe in her response to their questions about the future of their tenancy if they got top surgery, but we are not satisfied that the expenses for which Terry Wiebe seeks compensation were caused by this discrimination. We

accept that Ms. Olsen's responses to Terry Wiebe's questions made Terry Wiebe feel less comfortable in their home and less secure in their tenancy, but we do not accept that this caused them to move. Terry Wiebe's own evidence made it clear that they moved because Ms. Olsen evicted them, not because Ms. Olsen made them feel uncomfortable before the eviction.

[165] We dismiss Terry Wiebe's request for compensation for expenses incurred due to the discrimination.

B. Injury to dignity

[166] Section 37(2)(b)(ii) of the *Code* says that if the Tribunal finds a complaint is justified, it may order compensation for injury to dignity, feelings and self respect.

[167] Terry Wiebe seeks compensation for injury to dignity in the amount of \$50,000, but this is based on their allegation that Ms. Olsen's discriminatory conduct included the eviction, which we have found was not discriminatory. They did not make arguments about the appropriate amount of an injury to dignity award based on Ms. Olsen's responses to their questions about the future of their tenancy if they got top surgery. Ms. Olsen did not make any arguments about the appropriate amount of an injury to dignity award.

[168] A violation of a person's human rights is a violation of their dignity: *Nelson v. Goodberry Restaurant Group Ltd. dba Buono Osteria and others*, 2021 BCHRT 137 at para. 33. The purpose of an injury to dignity award is to address this harm. Determining the amount of an injury to dignity award depends on the specific facts and circumstances in any given case: *Gichuru v. Law Society of British Columbia (No. 2)*, 2011 BCHRT 185 at para. 260, upheld in 2014 BCCA 396. In making an injury to dignity award the Tribunal considers factors including the nature of the discrimination, the complainant's social context or vulnerability, and the specific effect the discrimination had on the complainant: *Oger* at para. 225. Considering these factors, we find \$10,000 is an appropriate amount. In this section we explain our reasons for this finding.

1. *Nature of the discrimination*

[169] We begin with the nature of the discrimination. The conduct which we have found to be discriminatory consists of Ms. Olsen's responses to Terry Wiebe's questions about whether they could stay on the property if they had top surgery. Ms. Olsen did not say yes or no to these questions, but said she would be uncomfortable with it or she would not support it. It was reasonable for Terry Wiebe to interpret this to mean that Ms. Olsen might end the tenancy, if they got top surgery. On the evidence before us we could not determine exactly when or how many times Terry Wiebe asked questions about this issue, but we accept that it happened on a handful of occasions between April 2017 and June 2018.

[170] Like all conduct contrary to the *Code*, the nature of this discrimination was serious. But it was not the most serious form of discrimination. For example, Ms. Olsen's discriminatory responses to Terry Wiebe's questions were less egregious than persistent harassment about their gender identity. Nor was her conduct as egregious as it would have been if she had evicted Terry Wiebe for reasons related to their gender identity. Nevertheless, we find that Ms. Olsen's repeated refusal to reassure Terry Wiebe that their tenancy would be safe even if they got top surgery was serious, as it sent a message that Terry Wiebe would lose their home if they took further steps to change their gender.

2. *Social context*

[171] Regarding Terry Wiebe's social context or vulnerability, we consider that they were vulnerable to discrimination in two intersecting ways: due to the imbalance of power with Ms. Olsen in the context of their tenancy relationship, and as a transgender person in a society that continues to marginalise and discriminate against transgender people.

[172] The social context that creates vulnerability for transgender people in general was summarised by the Tribunal in *Oger*:

...despite some gains, transgender people remain among the most marginalized in our society. Their lives are marked by "disadvantage, prejudice, stereotyping, and

vulnerability... They are stereotyped as "diseased, confused, monsters and freaks..." [para. 62, citations omitted]

[173] The Supreme Court of Canada commented on the consequences of this vulnerability in *Hansman*:

Transgender people have faced discrimination in many facets of Canadian society. Statistics Canada has concluded that they are at increased risk of violence, and report higher rates of poor mental health, suicidal ideation, and substance abuse as a means to cope with abuse or violence they have experienced... Studies have concluded that they are disadvantaged relative to the general public in housing, employment, and healthcare... And despite encountering a higher incidence of justiciable legal problems, studies have also found that transgender people have traditionally faced greater access to justice barriers than the broader population, in part due to a lack of explicit human rights protections... [para. 86, citations omitted]

[174] Terry Wiebe was also vulnerable as Ms. Olsen's tenant. As we have already noted, the imbalance of power in the landlord-tenant relationship between the parties was mitigated, to some extent, by their friendship. But the friendship deteriorated after Ms. Olsen told Terry Wiebe she would be uncomfortable with them getting top surgery. Despite their once-friendly relationship, Ms. Olsen had power over Terry Wiebe as the owner of the property where they lived, and had the ability to evict them. Terry Wiebe was acutely aware of this, and it contributed to their vulnerability in relation to Ms. Olsen.

3. Impact of the discrimination

[175] We accept that the discrimination had a profound impact on Terry Wiebe. In their evidence, they described the devastating effect of Ms. Olsen saying she would be uncomfortable with them getting top surgery: they said they felt bullied, disrespected, and betrayed. It made them feel unsafe in their home, and fearful that Ms. Olsen would end their tenancy.

[176] The impact of the discrimination includes Terry Wiebe's decision to stop hormone treatment, during the tenancy. We accept that Ms. Olsen's response to their questions about the future of their tenancy, if they got top surgery, was a factor in this decision, even though

they told Ms. Olsen they had other reasons for the decision. They told Ms. Olsen that they would stop hormone treatment because they believed it was causing health problems. They later received a medical opinion that this was not the case, but they did not tell Ms. Olsen about this. In June 2018 they told Ms. Olsen and Ms. Mason they planned to stop hormone treatment because they did not like the facial hair that it caused them to grow, and they no longer planned to change their gender.

[177] Although Terry Wiebe’s evidence at the hearing contradicts the reasons they gave to Ms. Olsen about why they stopped hormone treatment, in our view this does not undermine their credibility. Their claim that they stopped hormone treatment “for fear of recourse” was in their human rights complaint form, and they were consistent about it throughout the hearing. Their decision not to tell Ms. Olsen about this reason for stopping hormone treatment was understandable in light of Ms. Olsen’s response to their inquiries about the future of their tenancy if they got top surgery. Even if Ms. Olsen’s discomfort was mainly about top surgery, it was reasonable for Terry Wiebe to believe that continuing hormone treatment could put their tenancy at risk. Terry Wiebe did not know that some of Ms. Olsen’s discomfort was related to her family history of breast cancer, and Ms. Olsen had told them she did not support Terry Wiebe’s hormone treatment.

[178] Based on these facts, we accept that Terry Wiebe stopped hormone treatment due, at least in part, to their concern about the future of their tenancy. Based on what they said to Ms. Olsen and Ms. Mason, we find their dislike of facial hair may have been an additional factor in their decision. The evidence also suggests that they considered stopping hormone treatment due to their health problems, before their doctor told them the hormone treatment was not related to their health problems. But we accept that concerns about the future of their tenancy contributed to their decision to stop hormone treatment before the eviction, and this decision had serious consequences for them. As they said in their final arguments, “When I was taking testosterone, I never felt better in my entire life...I felt like me. I finally felt like I was complete...like I appeared on the outside like I felt on the inside...it was not my intention to

become a man, ever, it was my intention to become me, to feel like the person I always wanted to be.” These statements illustrate the impact that stopping hormone treatment had on them.

[179] The enduring impact of Ms. Olsen’s discriminatory conduct on Terry Wiebe was apparent during the hearing. Terry Wiebe expressed strong emotion while discussing how their experience with Ms. Olsen affected them, and when Ms. Olsen and other witnesses repeatedly misgendered them. Although several years have passed since the discrimination, it was clear that the experience continues to affect Terry Wiebe.

[180] While we accept that the discrimination had a profound impact on Terry Wiebe, we are not satisfied that it caused all the negative health effects they referred to in their evidence. Terry Wiebe said Ms. Olsen’s conduct caused them to experience anxiety and depression, and Ms. Zimmerman confirmed that she observed Terry Wiebe’s health declining as a result of their negative experience with Ms. Olsen. But Terry Wiebe acknowledged that their anxiety and depression could have been caused by numerous factors, and they have not sought medical treatment for it. In these circumstances, we find the discrimination affected their mental well-being, but we do not accept that it caused any mental health disabilities.

[181] We are mindful that some of the impact on Terry Wiebe resulted from the breakdown in their friendship with Ms. Olsen and the other people who lived on her property, rather than from the discrimination in their tenancy. As noted above, there are no “bright lines” separating the parties’ landlord-tenant relationship, which is subject to the *Code*, from the relationship between friends, which is not. It is not possible to completely untangle the impact of the breakdown of their friendship from the impact of the discrimination.

[182] We are also mindful that some of Terry Wiebe’s evidence about the impact of the discrimination on them related to the eviction, which we have found not to be discriminatory. On the evidence before us, it is not possible to completely untangle the impact of the eviction from the impact of Ms. Olsen’s discriminatory responses to Terry Wiebe’s questions about whether their tenancy would be safe if they got top surgery.

[183] Despite these qualifications, we accept that Ms. Olsen’s responses to Terry Wiebe’s questions about whether their tenancy would be safe if they got top surgery made them feel uncomfortable on Ms. Olsen’s property and insecure in their tenancy, even before the eviction. We also accept that this had a profound impact on them, aside from the impact of the eviction, especially by causing them to stop hormone treatment.

4. Case law and conclusion

[184] Quantifying an award for injury to dignity is a difficult exercise. Previous cases in which the Tribunal has made such awards may create helpful precedents, but the Tribunal is not bound by a “range” of appropriate awards: *University of British Columbia v. Kelly*, 2016 BCCA 271 at paras. 60-1. Each case must be decided on its own facts, and the facts of every case are different. Nevertheless, it is helpful to review recent injury to dignity awards in cases that have some similarities to this one.

[185] In our view, the nature and impact of the discrimination in this case are less serious than in *Brooks*, where the respondents were responsible for persistent homophobic comments and conduct over the course of seven years, which led the complainant to quit his job and leave his home. In *Brooks* the Tribunal awarded \$40,000 for injury to dignity.

[186] The nature and impact of the discrimination in this case are also less serious than in *Oger*, where the Tribunal awarded \$35,000 for injury to dignity. In that case the complainant, a transgender woman, was running in a provincial election when the respondent created and circulated a publication attacking her on the basis that she was unsuitable to hold office because she was transgender. The Tribunal found the publication deprived Ms. Oger of the opportunity to run a political campaign on an equal footing with other candidates, and more importantly, caused legitimate fear for her safety and the safety of her family and supporters.

[187] In *Nelson*, the complainant was a transgender person who used they/them pronouns. Their co-worker refused to use their correct pronouns or their correct name, despite their request. This happened over a relatively short period of time, about four weeks, but it happened frequently during that period, and it culminated in the termination of the

complainant's employment, which the Tribunal found was connected to their gender identity. The Tribunal awarded \$30,000 for injury to dignity.

[188] We find the impact of the discrimination in *Nelson*, which included the termination of the complainant's employment, was more serious than in this case. The social context was also different than this case, in that the discrimination arose in an employment relationship rather than a tenancy, and the complainant in *Nelson* was especially vulnerable because they had recently moved to the small community where the discrimination took place. But like this case, *Nelson* involved conduct by the respondents that discouraged the complainant from expressing their true self, and had profound effects on their mental well-being and self-confidence.

[189] We also consider cases involving racial discrimination in the employment context, where the complainants' co-workers used racial slurs to describe the complainants, on isolated occasions: *Bhangu v. Inderjit Dhillon and others*, 2023 BCHRT 24 and *Martinez Johnson v. Whitewater Concrete Ltd. and others (No. 2)*, 2022 BCHRT 129. We recognise that employment relationships are different from tenancy relationships, and racial discrimination is different from discrimination based on gender identity. But *Bhangu* and *Martinez Johnson* are helpful because they demonstrate how the Tribunal has addressed discriminatory statements that did not lead to eviction or termination of employment.

[190] We find the nature and impact of the discrimination in this case is more serious than in *Bhangu* and *Martinez Johnson*. In both those cases the discrimination occurred over shorter time periods: in *Bhangu* it involved a single incident, although the incident was serious because it involved physical violence, and in *Martinez Johnson* there were two incidents identified, about five months apart. In both cases the people who used racial slurs were co-workers of the complainant, rather than their managers or employers, so the power imbalance between the parties was not as serious as in this case. And in both cases the Tribunal found the discrimination had a harmful but limited impact on the complainants. In *Bhangu* the Tribunal awarded \$6,000 for injury to dignity, and in *Martinez Johnson* it awarded \$2,500.

[191] We have found the discrimination against Terry Wiebe was serious, although it was not the most egregious form of discrimination. We have considered the social context that created vulnerability for Terry Wiebe, and the profound impact of the discrimination on them, especially the fact that it contributed to their decision to stop hormone treatment. In our view, taking into account these factors and the Tribunal's recent awards for injury to dignity in other cases, an appropriate award in this case is \$10,000.

V CONCLUSION

[192] Ms. Olsen discriminated against Terry Wiebe in their tenancy, on the basis of their gender identity and expression, in violation of s. 10 of the *Code*.

[193] Under s. 37(2)(a) of the *Code*, we order Ms. Olsen to cease the contravention of the *Code* and refrain from committing the same or similar contraventions.

[194] Under s. 37(2)(d)(iii) of the *Code*, we order Ms. Olsen to pay Terry Wiebe \$10,000 as compensation for injury to their dignity, feelings, and self-respect, plus post-judgment interest on this award until paid in full, based on the rates set out in the *Court Order Interest Act*.

Andrew Robb
Tribunal Member

I AGREE: Robin Dean, Tribunal Member

I AGREE: Devyn Cousineau, Vice Chair