

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

Kirstin Chase Olsen

(the Petitioner)

AND:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

(the Respondents)

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**PETITION RECORD**

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Theresa (Terry) Wiebe**

**Hearing Date and Time:**

**Assize week of June 1, 2026**

**10:00 am**

**Place of Application:**

**Abbotsford Supreme Court**

**Time Estimate:**

**2 days**

**Submitted by:**

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

NO  
ABBOTSFORD REGISTRY

## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Kirstin Chase Olsen

(the Petitioner)

AND:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

(the Respondent)

### PETITION TO THE COURT

ON NOTICE TO:

British Columbia Human Rights Tribunal

Theresa (Terry) Wiebe

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

This matter is an application for judicial review.

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

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

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

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

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

**Time for response to petition**

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

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

The address of the registry is:

Abbotsford Registry  
32375 Veterans Way,  
Abbotsford, BC V2T 0K1

The address for service of the Petitioner is:

Fax number address for service:

(

E-mail address for service:

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

Tabitha Ewert

## CLAIM OF THE PETITIONER

### PART 1: ORDER(S) SOUGHT

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

### PART 2: FACTUAL BASIS

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

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

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

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

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

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

### **Olsen’s Motives for the Impugned Speech**

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

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

### **Wiebe and Olsen’s Complex Personal Relationship**

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

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

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

### PART 3: LEGAL BASIS

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

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

### **Standard of Review**

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

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

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

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

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

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

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

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

27. It is well established that there must be "something more" than an unwelcome comment to evoke section 10: "The Code was not intended to insulate people from any and all comments which might be considered insensitive. Were it to do so, it would have an unwarranted and unintended chilling effect on normal human interaction." (*Dennis v. B.C. (Ministry of Skills, Development and Labour) and others*, 2003 BCHRT 169 at para 20).
28. The Tribunal elaborated on this point in *Smith v. Mohan (No. 2)*, 2020 BCHRT 52 at para 213 ("*Smith*"):

[213] The Tribunal has said that when deciding whether negative comments rise to a level of harassment that adversely impacts a person in their tenancy and, in that sense, go beyond the boundaries of reasonable social interaction, the context is critical, including "the involved parties, the context in which the comment was made, whether an apology was offered, and whether or not the recipient of the comment was a member of a group historically discriminated against": Brito at para. 43. To that, I would add the virulence or egregiousness of the comments is a relevant factor: Francis at para. 314. Overall, what the Tribunal is concerned with is barriers to the participation in the areas of life protected by the Code: Brito at para. 41.

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

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

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

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

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

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

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

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

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

**PART 4: MATERIALS TO BE RELIED ON**

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

**DATED:** March 21, 2025



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Tabitha Ewert  
Lawyer for the Petitioner

**To be completed by the court only:**

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date [dd/mmm/yyyy]: \_\_\_\_\_

Signature of  Judge  Associate Judge



No. ABB-S-S-07078  
Abbotsford Registry

*In the Supreme Court of British Columbia*  
In the Matter of the *Judicial Review Procedure Act* R.S.B.C. 1996, c. 241

Between:

**Kirstin Chase Olsen**

Petitioner

And:

**British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe**

Respondents

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**RESPONSE TO PETITION**

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Filed by Theresa (Terry) Wiebe (the "Respondent").

THIS IS A RESPONSE TO the petition filed March 25, 2025.

**Part 1: ORDERS CONSENTED TO**

The Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the petition: NONE.

**Part 2: ORDERS OPPOSED**

The Respondent opposes the granting of the orders set out in ALL paragraphs of Part 1 of the petition.

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The Respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the petition: NONE.

#### **Part 4: FACTUAL BASIS**

1. The Respondent lived in a motorhome on the property owned by the Petitioner from 2014 to 2018. The Respondent made payments to the Petitioner for keeping their motorhome on the property, in money and in work at the Petitioner's business (*Wiebe v. Olsen*, 2025 BCHRT 14 at para. 98).
2. The Respondent is transgender and uses the pronouns they/them.
3. In 2017, the Respondent disclosed to the Petitioner that they were planning to change their gender. In response, the Petitioner made transphobic statements (*Wiebe v. Olsen*, 2025 BCHRT 14 at paras. 40 & 119-120). The relationship between the two subsequently deteriorated. In 2017 and 2018, the Respondent asked the Petitioner, on several occasions, if their tenancy would be affected if they transitioned. The Petitioner did not answer the question directly but stated that she was uncomfortable with it and did not support it. In 2018, the Petitioner evicted the Respondent. The Respondent asked the Petitioner if their decision to change their gender was the reason for the eviction to which the Petitioner acknowledge her discomfort with it (*Wiebe v. Olsen*, 2025 BCHRT 14 at para. 65).
4. On September 11, 2019, the Respondent filed a complaint with the BC Human Rights Tribunal (the "Tribunal") against the Petitioner under s. 10 of the British Columbia Human Rights Code (the "Code"). The Respondent alleged that the Petitioner discriminated against them in their tenancy based on their gender identity and expression.
5. In their Reasons for Decision dated January 22, 2025, the Tribunal found that the Petitioner did discriminate against the Respondent in their tenancy on the basis of their gender identity and expression, in violation of s. 10 of the *Code* (the "Decision").
6. The Tribunal ordered the Petitioner to cease the contraventions and refrain from

committing the same or similar contraventions, and to pay the Respondent \$10,000 as compensation for injury to their dignity, feelings, and self-respect.

## **Part 5: LEGAL BASIS**

1. The Respondent will rely on the following:
  - a. The *Judicial Review Procedure Act (JRPA)*, RSBC 1996, c. 241;
  - b. The *Administrative Tribunals Act (ATA)*, SBC 2004, c.45;
  - c. The *Human Rights Code*, [RSBC 1996] c. 210;
  - d. The *Supreme Court Civil Rules*, BC Reg 168/2009; and
  - e. The inherent jurisdiction of this Court.

## **Legal Background**

### ***Issues***

2. The Petitioner alleges that the Decision contains the following errors:
  - a. That the Petitioner and Respondent had a tenancy relationship within the meaning of s. 10 of the *Code*;
  - b. That the Respondent experienced an adverse impact regarding a term or condition of their tenancy as a result of the Petitioner not being supportive of top surgery;
  - c. That gender identity or expression was a factor in the adverse impact the Respondent experienced;
  - d. That the Petitioner's freedom of expression under s. 2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982, Canada Act (UK), 1982, c. 11* (the "*Charter*") was disregarded and not balanced with the purpose of the *Code*; and

- e. That the damages to dignity in the amount of \$10,000 was disproportionate.
3. The Respondent denies that the Tribunal made any of the above errors.
  4. The alleged errors in paragraph 2 (a-c) are findings of fact. The standard of review is reasonableness and merits deference (s. 59 of the *ATA*; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 24-25 (“*Vavilov*”); *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para. 53 (“*Dunsmuir*”)).
  5. The alleged error in paragraph 2 (d) is a mixed question of fact and law. The standard of review is reasonableness and merits deference (*Vavilov* at paras. 17-18; *Dunsmuir* at para. 53).
  6. Decisions by the Tribunal on the amount to be awarded for injury to dignity are discretionary decisions that attract the standard of review of patent unreasonableness pursuant to s. 59(4) of the *ATA*.

### ***The Role of the Court on Judicial Review***

7. The court performs a limited role on judicial review. It does not sit as an appellate court or re-try the matters decided by the tribunal. The court cannot re-weigh the evidence, make findings of credibility, or substitute its view of the merits of that of the tribunal. The court is not permitted to set aside a decision of a statutory tribunal simply because it would have reached a different conclusion. Rather, the court’s role is to assess, on application of the proper standard of review, whether the tribunal has made a reviewable error justifying the court’s intervention.

*Kinexus Bioinformatics Corporation v. Asad*, 2010 BCSC 33 at paras. 12-13.

### ***Standard of Review***

8. Section 32 of the *Code* incorporates provisions of the *ATA*, including s. 59, which states:

59 (1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

9. Decisions by the Tribunal on the amount to be awarded for injury to dignity are discretionary decisions that are reviewed on the standard of patent unreasonableness pursuant to s. 59(4) of the *ATA*.

10. The standard of patent unreasonableness has the meaning given to it by the common law at the time the *ATA* came into effect. It does not have the same meaning as the reasonableness standard set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 ("*Dunsmuir*"). The standard of patent unreasonableness is a

much higher threshold for intervention and ensures a higher level of deference than the reasonable standard, which allows courts to intervene if a decision falls outside the scope of acceptable outcomes.

*Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2014 BCCA 496, leave to appeal to SCC refused, at paras. 39-48.

11. Patent unreasonableness is the most deferential standard of review known to Canadian law. For a decision to be patently unreasonable, it must be “clearly irrational”, “evidently not in accordance with reason” or “so flawed that no amount of curial deference can justify letting it stand”.

*Mardones v. British Columbia (Workers’ Compensation Appeals Tribunal)*, 2023 BCSC 385 at paras. 30-31.

12. A tribunal whose decisions are subject to review on the standard of patent unreasonableness is entitled to “make errors, even serious ones, provided it does not act in a manner ‘so patently unreasonable that its construction cannot be rationally supported by the relevant legislation and demands intervention by the court upon review’”.

*Caimaw v. Paccar of Canada Ltd.*, [1989] 2 S.C.R. 983 at 1003.

13. The Court must not reweigh the evidence or second guess the inferences or conclusions drawn from the evidence or engage in a “line-by-line treasure hunt for error”.

*Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para. 54.

*Speckling v. British Columbia (Workers’ Compensation Board)*, 2005 BCCA 80, at paras. 33 & 37.

### ***Tenancy relationship between the Petitioner and the Respondent***

14. The Tribunal found that the relationship between the Petitioner and Respondent was a tenancy within the meaning of s. 10 of the *Code*.
15. The Tribunal made this determination having acknowledged that the Petitioner and Respondent also had a complex personal and employment relationship (at para. 105 of the Decision).
16. The Tribunal recognized that the monthly \$200 rent was below market value and still determined that despite the complexities of the relationship, that none of these facts precluded a finding that s. 10 of the *Code* applied to their relationship (paras. 17 & 105 of the Decision).
17. Tenancy under s. 10 of the *Code* has been interpreted broadly to ensure that it achieves its broad public purpose (*McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39 at para. 17).
18. The Petitioner's position is that her relationship with the Respondent is more akin to that in *Brooks v. Skyacres Turkey Ranch Ltd. and others* (No. 2), 2022 BCHRT 73 ("*Brooks*") and *Oloresisimo v. Oloresisimo-Esquivel and Esquivel*, 2005 BCHRT 64 ("*Oloresisimo*") than *McCulloch v. British Columbia (Human Rights Tribunal)*, 2019 BCSC 624 ("*McCulloch*"). The Respondent disagrees and argues that the Tribunal correctly relied on *McCulloch*. The Decision also references *Brooks* and *Oloresisimo* and suggests that the Tribunal did appropriately consider all of the relevant jurisprudence.
19. In *Brooks*, there was no payment of rent or offer of any other consideration in exchange for accommodation (at para. 227). Similarly, Mr. Oloresisimo was not paying rent, offering other consideration, and at times considered himself to be a "guest" (*Oloresisimo* at para. 19). In this case, the Respondent paid the Petitioner rent for keeping their motorhome on the property as well as other consideration

such as helping with the Petitioner's business and renovations (at paras. 17 & 98 of the Decision). The Petitioner and Respondent never categorized their arrangement as that of a guest but rather, as friends, landlord, and tenant (paras. 108-109 of the Decision). Applying *McCulloch* to the facts of this case appropriately accounts for the context and relevant circumstances amongst the Petitioner and Respondent that a reliance on *Brooks* and *Oloresisimo* cannot account for in a fulsome manner (*British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 67).

20. While the Petitioner is now alleging that there was no landlord and tenant relationship between her and the Respondent, the Tribunal noted that she did so in her submissions to the Residential Tenancy Branch in 2018 where she refers to herself as the landlord, the Respondent as her tenant, and describes the arrangement amongst them as a tenancy (at para. 109 of the Decision). The Tribunal found that this was indicative that the Petitioner and Respondent intended the relationship to be a form of tenancy (at para. 110 of the Decision).

21. The Petitioner argues that the Tribunal erred in finding that the Petitioner and Respondent had a tenancy relationship according to the *McCulloch* factors because the Petitioner did not demand rent. However, rent is not one of the *McCulloch* factors. The BC Supreme Court in *McCulloch* found that the Tribunal made an extricable error of law when they concluded that without the payment of rent or some other form of consideration, that an occupant of a premise is not protected by s. 10 of the *Code* (at paras. 123-124):

I have concluded that the Tribunal committed an extricable error of law by adopting a narrow and formalistic interpretation of the scope of s. 10, rather than engaging the necessary contextual analysis focused on the purpose of the *Human Rights Code*. In doing so, the Tribunal erroneously limited the protection of s. 10 to only those circumstances where occupants, even if legally entitled to reside in an accommodation without paying rent or some other form of consideration, must nonetheless provide such consideration before being protected against discriminatory treatment under s. 10. Narrowing the scope

of s. 10 in this way frustrates the purpose of human rights legislation to protect vulnerable occupants.

I am guided in my conclusion regarding the scope of s. 10 by a recent decision from the Supreme Court of Canada in a case called *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62. In that case, the Court reasoned that, when interpreting provisions of the *Human Rights Code*, courts should favour interpretations that align with the purposes of human rights laws and not adopt narrow or technical constructions that would frustrate those purposes. Although *Schrenk* concerned the interpretation of s. 13(b) of the *Human Rights Code* (which protects against discrimination in the context of employment), the analytical framework in *Schrenk*, and the Court's interpretative approach, also informs the scope of s.10(1)(b).

22. Similarly, in *Oloresisimo*, the Tribunal acknowledged that while in most cases, tenancy relationships indicate that rent or some form of payment is typical, the absence of rent does not automatically preclude a tenancy relationship (at para. 17). Rather, it is the overall context and the relationship between the parties that are more significant than the presence of a formal lease or payment arrangement (*McCulloch* at para. 130). Importantly, it was an undisputed fact in this case that the Respondent did pay rent and other consideration in exchange for keeping their motorhome on the property (at para. 17 of the Decision).

23. Lastly, the Petitioner alleges that the Tribunal erred in placing emphasis on the control she had over the land as the Respondent had the option of moving their motorhome and maintaining their living space in a different location. However, the Respondent had taken steps to make the motorhome permanent and undrivable (at para. 101 of the Decision). The Respondent's position is that the Tribunal appropriately applied the *McCulloch* factors. The Petitioner was in control of the land where the Respondent's motorhome was parked. The Petitioner exercised that control when she evicted the Respondent and stated that if the Respondent did not move out by January 31, 2019, that she would file a writ of possession and have a sheriff enforce the eviction (at para. 71 of the Decision).

***The Respondent experienced an adverse impact in their tenancy as a result of the Petitioner not being supportive of their gender transition***

24. While the Tribunal did find that gender identity or expression was not a factor in the eviction, the three Tribunal members determined that the Petitioner was responsible for an adverse impact on the Respondent's tenancy. The Tribunal found that this adverse impact was connected to the Respondent's gender identity and occurred when the Petitioner made comments about being uncomfortable with the Respondent getting gender affirming surgery when asked by the Respondent in 2017 and 2018 if they could stay on the property if they proceeded with surgery.

25. The Tribunal found that the Petitioner's repeated failure to confirm if the Respondent could stay on the property if they had top surgery had an adverse impact on their tenancy (at para. 130 of the Decision). This is a finding of fact by the Tribunal and entitled to deference. The question was explicitly about the tenancy (para. 131 of the Decision). The Tribunal accepted that it was reasonable for the Respondent to infer that the Petitioner may end the tenancy if they proceeded with their transition from the Petitioner's failure to confirm if the tenancy would continue and her statements that she would be uncomfortable and does not want to be around it (at para. 130 of the Decision).

26. The Petitioner's response and comments went beyond mere unwelcome and insensitive comments and did evoke s. 10 of the *Code (Dennis v. B.C. (Ministry of Skills, Development and Labour) and others*, 2003 BCHRT 169 at para. 20).

27. Further, the Tribunal has acknowledged the importance of context in *Smith v. Mohan (No. 2)*, 2020 BCHRT 52 at para. 213:

The Tribunal has said that when deciding whether negative comments rise to a level of harassment that adversely impacts a person in their tenancy and, in that sense, go beyond the boundaries of reasonable social interaction, the context is critical, including "the involved parties, the context in which the comment was made, whether an apology was offered, and whether or not the

recipient of the comment was a member of a group historically discriminated against”: *Brito* at para. 43. To that, I would add the virulence or egregiousness of the comments is a relevant factor: *Francis* at para. 314. Overall, what the Tribunal is concerned with is barriers to the participation in the areas of life protected by the *Code*: *Brito* at para. 41.

28. The Petitioner’s response that she did not support surgery and did not want to be around it, as well as her lack thereof to confirm that the tenancy would not be in jeopardy if the Respondent proceeded with their transition, in the context of previous transphobic statements negatively impacted the Respondent’s tenancy (at para. 137 of the Decision). The Tribunal accepted that the Petitioner made a transphobic statement when she referred to top surgery as “mutilation” (at para. 147 of the Decision). It is this context, as a whole, that contributed to the Respondent’s fear of housing insecurity and a reasonable desire for certainty (at para. 137 of the Decision). It created a situation where the Respondent felt that if they proceeded with their transition, they would jeopardize their housing security. The Respondent’s evidence at the Tribunal hearing was that they stopped hormone treatment because they feared that the Petitioner would evict them if they continued (at para. 32 of the Decision). The Tribunal accepted that the Respondent stopped hormone treatment, at least in part, because of concerns about the future of their tenancy (at para. 178 of the Decision).

29. Therefore, the Tribunal’s finding that the Respondent experienced an adverse impact in their tenancy as a result of the Petitioner not being supportive of surgery was both reasonable and correct and merits deference from this Court.

***Gender identity or expression was a factor in the adverse impact the Respondent experienced***

30. The Petitioner alleges that the Tribunal’s findings demonstrate that the Petitioner’s discomfort with surgery was based on her family’s history of breast cancer rather than discriminatory reasons related to gender identity or expression. This is a mischaracterization of the Tribunal’s findings. The Tribunal said they considered

“that there was at least **some** non-discriminatory basis for Ms. Olsen’s discomfort with top surgery” (emphasis added) (at para. 140 of the Decision). The Decision goes on at para. 147 to 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.

31. The Decision further states at para. 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.

32. The Petitioner had never expressed to the Respondent that the reason she was uncomfortable and unsupportive of top surgery was because of her family’s experience with breast cancer, fear that something may go wrong with the surgery, and worry that she would have to nurse and take care of the Respondent. The first time the Respondent heard these explanations was at the Tribunal hearing. The Decision mentions that the Respondent was not aware that some of the Petitioner’s discomfort was related to her family history of breast cancer (at para. 177 of the Decision). This is supported by the evidence referenced in the Decision where in a recorded conversation the Respondent states “I don’t understand where [the Petitioner] is coming from...why don’t you just be honest with me and tell me what this is really about?” (at para. 66 of the Decision).

33. The *Code* explicitly states that intent is not required for a finding that the *Code* has been breached (s. 2). The test is whether an individual has a protected characteristic, whether they experienced an adverse impact, and whether there was a nexus between the protected characteristic and the adverse impact (*Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33). The Supreme Court of Canada has clarified that it is unnecessary to prove discriminatory intent and that the focus is on the impact of the conduct on the complainant. The Court also held that the protected characteristic does not need to be the sole or even primary factor in the adverse impact (*Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30 at para. 45).
34. While the Petitioner alleges that she had several reasons to evict the Respondent, such as believing that they were responsible for the property becoming unsightly, plans to move family onto the property, and to redevelop or make some other use of the land where the Respondent's motorhome was located, she never discussed these reasons with the Respondent prior to the eviction (at para. 76 of the Decision).
35. The Petitioner's intention does not negate the adverse impact that the Respondent experienced. The Tribunal considered all the circumstances and factors set out in *Pardo v. School District No. 43*, 2003 BCHRT 71 and determined that the Petitioner's response to the Respondent's questions about the future of their tenancy had an adverse impact on the Respondent, by making them feel insecure in their living space (at para. 143 of the Decision).
36. Therefore, the Tribunal's finding that gender identity or expression was a factor in the adverse impact the Respondent experienced was both reasonable and correct and merits deference from this Court.

***Freedom of Expression under s. 2(b) of the Charter***

37. The Petition is an attempt to re-argue the case and go beyond the scope of the

original proceeding. It has raised new issues that were not put before the Tribunal.

38. It is well-established in the jurisprudence that a judicial review is not the appropriate mechanism to introduce new evidence and issues because it is not a re-hearing (*Vavilov* at para. 83). Rather, as stated in *Dunsmuir*, a judicial review is an inquiry into the “legality, the reasonableness and the fairness of the administrative process and its outcomes” (at para. 28).
39. The Supreme Court of Canada in *Vavilov* emphasized that a judicial review is about the legal soundness of decisions rather than re-hearing the matter and it is the record of the original proceedings that allow the court to determine whether the decision was correct, reasonable, and consistent with the law (at para. 83).
40. The Petitioner was at liberty to raise *Charter* values before the Tribunal and did not do so. The Petitioner has not demonstrated any of the exceptional circumstances in which new issues may be considered at judicial review.
41. The Respondent maintains that the Tribunal did interpret and apply the statutory objectives of the *Code* in a manner that is consistent and balanced with the *Charter*. The Tribunal found that the Petitioner did discriminate against the Respondent in their tenancy on the basis of their gender identity and expression. The Tribunal also determined that in 2017, the Petitioner made transphobic statements in response to learning that the Respondent was changing their gender. The Petitioner’s right to freedom of expression under s. 2(b) of the *Charter* is not absolute. The freedom of expression has limits, particularly when the expression causes harm or undermines the rights and dignity of vulnerable groups, such as transgender individuals. Such expressions found to be discriminatory and transphobic may reasonably be restricted under s. 1 of the *Charter*.
42. This was a four-day hearing with a large volume of evidence. There were three tribunal members, and their Decision was 45 pages long. A decision maker “is not required to record the entirety of his or her analysis, answer every argument,

reconcile every frailty in the evidence, refer to all the conflicting evidence, and set out every finding made” in reaching their decision (*R. v. Ali*, 2015 BCCA 333, at para. 13). A Tribunal member “is entitled to be presumed by this Court to have considered all of the evidence and arguments before him, even if he did not consider it necessary or worthwhile to recite all of it in his Decision” (*CS v. British Columbia (Human Rights Tribunal)*, 2017 BCSC 1268 at para. 219, aff’d 2018 BCCA 264).

### ***Disproportionate Damages***

43. The Petitioner alleges that the Tribunal erred in determining the damages to dignity in the amount of \$10,000. The Petitioner argues that such a penalty is disproportionate and does not balance the fulfillment of the statutory purpose of the *Code* against the Petitioner’s section 2(b) *Charter* right.
44. The amount awarded for injury to dignity, feelings, and self-respect is a discretionary matter, subject to the patent unreasonableness standard established for discretionary matters by the *ATA* s. 59(3) and (4).
45. The focus of an award for injury to dignity is the impact of the discrimination on the complainant. Here the Tribunal found that the Petitioner discriminated against the Respondent when she repeatedly refused to reassure them that their tenancy would be safe if they proceeded with surgery. This sent a message to the Respondent that they would lose their home if they took further steps to change their gender (at para. 170 of the Decision). In this context, the Respondent was vulnerable to discrimination in two intersecting ways: the imbalance of power with the Petitioner in the context of their tenancy relationship, and as a transgender person in a society that continues to marginalize and discriminate against transgender people (at paras. 171 & 174 of the Decision). This discrimination had a profound impact on the Respondent where they felt unsafe in their home, fearful that the Petitioner would end their tenancy, and stopped hormone treatment (at para. 176-178 & 183 of the Decision). Further, the discrimination has had an enduring impact on the Respondent (at para. 179 of the Decision).

46. The purpose of the award is to provide redress for the harm that has been done through the discrimination. This is an inherently imperfect process. The Tribunal considered the impact and social context of the discrimination in this case and relied on its expertise and discretion to find that the award should be \$10,000. There was evidence on which to base this exercise of discretion and the court should not interfere with it.

47. The Petitioner has not demonstrated that the Tribunal interpreted and applied the statutory objectives of the *Code* in a manner that is inconsistent and unbalanced with the *Charter*, let alone demonstrate the patent unreasonableness required to meet the high standard of review for a discretionary decision of the Tribunal.

***Remedy***

48. The Petitioner's grounds for review are an attempt to re-argue the case. The Petitioner has not demonstrated any error in the Decision, let alone the patent unreasonableness required to meet the high standard of review for a discretionary decision of the Tribunal.


49. The Petition should be dismissed with costs to the Respondent.

**Part 6: MATERIALS TO BE RELIED ON**

1. The Tribunal's record of proceedings; and
2. Such other material as may be filed herein and this Court shall permit.

The Respondent estimates that the hearing of the petition will take 1 day.

Dated: May 2, 2025



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Theresa (Terry) Wiebe  
Respondent

Respondent's address for service:

E-mail address for service:

***To be completed by the court only:***

Order made

[ ] in the terms requested in paragraphs ..... of Part 1 of this petition

[ ] with the following variations and additional terms:

.....  
.....  
.....

Date: .....[dd/mmm/yyyy]

.....  
Signature of [ ] Judge [ ] Master



File No. ABB-S-S-07078  
Abbotsford Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

KIRSTIN CHASE OLSEN

PETITIONER

AND:

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL  
AND THERESA (TERRY) WIEBE

RESPONDENTS

**RESPONSE TO PETITION**

**Filed by:** the petition respondent, the British Columbia Human Rights Tribunal [**Tribunal**].

THIS IS A RESPONSE TO the petition filed on March 25, 2025.

The Tribunal estimates that the petition will take 1 day.

**Part 1: ORDERS CONSENTED TO**

The Tribunal consents to the granting of the orders set out in the following paragraphs of Part 1 of the petition: None.

**Part 2: ORDERS OPPOSED**

The Tribunal opposes the granting of the orders set out in the following paragraphs of Part 1 of the petition: 2 (declaration) and 3 (if the petitioner seeks costs against the Tribunal).

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The Tribunal takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the petition: 1 and 4.

## Part 4: FACTUAL BASIS

### Overview

1. This judicial review arises from a decision of the Tribunal under the *Human Rights Code*, RSBC 1996, c. 210 [**Code**], indexed as *Wiebe v. Olsen*, 2025 BCHRT 14 [**Decision**].

Affidavit #1 of Kirstin Chase Olsen [**Olsen Affidavit #1**], Ex. C

2. In the Decision, the Tribunal concluded that Ms. Olsen discriminated against the respondent Terry Wiebe in tenancy, based on gender identity and expression, violating s. 10 of the *Code*. However, the Tribunal found that Terry Wiebe had proved only part of their complaint. Specifically, the Tribunal found:
  - a. The parties were in a tenancy relationship within the meaning of s. 10 of the *Code*;
  - b. Ms. Olsen made comments to Terry Wiebe in relation to their gender identity – specifically, that Terry Wiebe was “fine as a lesbian” and that top surgery was “mutilation”, but that these comments were **not** sufficiently connected to the tenancy context (but were connected to the parties’ personal relationship) and therefore were not discrimination under the *Code*;
  - c. Terry Wiebe’s gender identity was **not** a factor in Ms. Olsen terminating the tenancy;
  - d. Terry Wiebe asked Ms. Olsen a handful of times between April 2017 and June 2018 if they could stay on the property even if they had top surgery; Ms. Olsen did not confirm that they could and only said she would be uncomfortable with it or she would not support it; Ms. Olsen’s response adversely affected the tenancy by making Terry Wiebe feel insecure in their living space;
  - e. 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; Terry Wiebe was fearful that Ms. Olsen would end their tenancy and stopped taking hormone treatment at least in part because of this concern; an appropriate award for compensation for injury to dignity, feelings, and self respect under s. 37(2)(d)(iii) was \$10,000.
3. The petition refers to Ms. Olsen’s response to Terry Wiebe’s questions about if they could stay on the property even if they had top surgery as the “Impugned Speech”. The petition alleges errors in the Tribunal’s findings that the parties had a tenancy relationship and that Ms. Olsen’s response to Terry Wiebe’s questions about if they could stay on the property even if they had top surgery had an adverse impact on Terry Wiebe based on their gender

identity. The petition also takes issue with the amount of compensation the Tribunal ordered. The Tribunal appears principally to address the standard of review on these issues.

4. The petition also alleges that the Tribunal “penalized the Impugned Speech” and erred because it did not address Ms. Olsen’s freedom of expression under s. 2(b) of the *Canadian Charter of Rights and Freedoms* [**Charter**]. The record relied on by Ms. Olsen indicates that Ms. Olsen did not rely on s. 2(b) of the *Charter* before the Tribunal. The Court will generally not intervene based on an argument that could have been, but was not, raised before the administrative tribunal.

#### **The complaint and response to complaint**

5. On September 11, 2019, the respondent Terry Wiebe filed a complaint with the Tribunal.

Olsen Affidavit #1, Ex. A

6. On December 11, 2019, the petitioner filed a response to the complaint.

Olsen Affidavit #1, Ex. B

#### **Hearing**

7. A three-member panel of the Tribunal heard the complaint over four days, June 17-20,2024.

#### **Decision**

8. The Tribunal issued the Decision on January 22, 2025. Following an introduction and canvassing of the evidence, the Tribunal set out the legal framework for discrimination under s. 10 of the *Code*:

[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.

9. The Tribunal summarizes the findings at issue, as follows.

### **Tenancy Relationship**

10. The Tribunal said that the *Code* does not define what makes a tenancy and that the term is broadly interpreted to ensure s. 10 achieves its broad public purpose in relation to housing (para. 93). Whether there is a tenancy under other legislation is not determinative of whether there is a tenancy under the *Code* (para. 94).
11. This Court in *McCulloch v. British Columbia (Human Rights Tribunal)*, 2019 BCSC 624 at para. 130, said that the Tribunal must conduct a contextual analysis to decide if s. 10 applies, including the respondent's control over the complainant's living space, if the conduct occurred there, and whether the respondent's conduct negatively affected the complainant's tenancy or living space. The Tribunal has also identified that relevant factors include whether there was payment of rent, a pre-agreed term, or some degree of permanence, and whether the parties intended to create a tenancy relationship (paras. 95-96) The Tribunal considered each of the factors, finding that:
  - a. Terry Wiebe made payments in return for keeping their motorhome on the property, in money or in work at Ms. Olsen's business, which supported a finding of a tenancy (para. 98);
  - b. For most of the time Terry Wiebe lived on Ms. Olsen's property, the parties intended it to be for an indefinite term with a degree of permanency, supporting a finding of a tenancy (paras. 99-102);
  - c. It was more likely than not that Ms. Olsen described Terry Wiebe as her tenant; on its own, this was not determinative but was relevant (paras. 103-110);
  - d. On the *McCulloch* factors, Ms. Olsen did not have control over the interior of Terry Wiebe's living space but did have control over the land where it was parked. Ms. Olsen asserted her right to control when she asked Terry Wiebe to leave. The fundamental power imbalance between the parties made Terry Wiebe vulnerable to the effects of discriminatory conduct by Ms. Olsen (paras. 111-113).

12. The Tribunal concluded that the relationship was a tenancy within the meaning of the *Code* (para. 115). It said:

[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.

#### **Adverse impact in tenancy based on gender identity**

13. As set out above, the Tribunal found that Terry Wiebe did not establish two aspects of their complaint.

14. First, Ms. Olsen's comments to Terry Wiebe in relation to their gender identity – specifically, that Terry Wiebe was “fine as a lesbian” and that top surgery was “mutilation” – were **not** sufficiently connected to the tenancy context (but were connected to the parties' personal relationship) and therefore were not discrimination under the *Code* (paras. 118-128).

15. Second, Terry Wiebe's gender identity was not a factor in Ms. Olsen terminating the tenancy (paras. 145-158).

16. However, the Tribunal found that Ms. Olsen's repeated refusal, when asked, to reassure Terry Wiebe between April 2017 and June 2018 that they could stay on the property even if they had top surgery adversely affected the tenancy by making Terry Wiebe feel insecure in their living space (paras. 129-143).

#### **Remedy**

17. The Tribunal ordered Ms. Olsen to pay Terry Wiebe \$10,000 compensation for injury to dignity, feelings, and self-respect under s. 37(2)(d)(ii) of the *Code* (para. 194). The Tribunal considered:

- a. 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 (paras. 169-170);

- b. The social context of the discrimination, including the imbalance of power with Ms. Olsen in the context of the tenancy relationship and that society continues to marginalise and discriminate against transgender people (paras. 171-174);
- c. The discrimination had a profound impact on Terry Wiebe who was fearful that Ms. Olsen would end their tenancy and that this concern was a factor in their decision to stop hormone treatment during the tenancy (paras. 175-183);
- d. The case law though the Tribunal is not bound by a “range” of appropriate awards (paras. 184-191).

## **Part 5: LEGAL BASIS**

### **The role of the court**

18. On judicial review the court exercises a limited supervisory jurisdiction. The court’s role is to assess whether its intervention in a tribunal’s process or decision-making is warranted having regard to the discretionary nature of judicial review. On the merits of a petition, the court determines, on the applicable standard of review, whether a tribunal has made a reviewable error justifying the court’s intervention. The court does not reweigh the evidence and is not permitted to set aside a decision of a statutory tribunal merely because it would have reached a different conclusion.

*Kinexus Bioinformatics Corp. v. Asad*, 2010 BCSC 33 [*Kinexus*] at paras. 12-14

19. The burden is on the petitioner to demonstrate that the court’s intervention is warranted.

*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at paras. 75 and 100

### **The role of the Tribunal**

20. Generally, the Tribunal has an explanatory role respecting the record, and makes submissions regarding the principles of judicial review, the standard of review, and the available relief should the Court determine that relief is warranted.
21. The Tribunal relies on the *Code*, the *Administrative Tribunals Act*, SBC 2004, c. 45 [*ATA*], the *Judicial Review Procedure Act*, RSBC 1996, c. 241, and the *Supreme Court Civil Rules*.

### **The issues before the Court**

22. The issues before the Court are:

- a. Should the Court extend the time to file the petition?
- b. What material is admissible on judicial review?
- c. What is the standard of review?
- d. Is the finding that there was a tenancy relationship unreasonable?
- e. Is the finding of discrimination unreasonable?
- f. Should the Court consider the petitioner's reliance on the *Charter*?
- g. Is the compensation order patently unreasonable?
- h. If the Court's intervention is warranted, what relief is available?

**A. Time limit**

23. The petition was filed one day after the 60-day time limit in s. 57(1) of the ATA. The Decision was issued January 22, 2025, so the time limit fell on March 24, 2025. The petition was filed the next day, on March 25, 2025. The Tribunal takes no position on the issue of whether the Court should extend the time limit for this petition under s.57(2) of the ATA.

*ATA, s. 57; made applicable by Code, s. 32(p)*

**B. What material is admissible on judicial review?**

24. Judicial review is based on the record of the materials before the administrative tribunal when it made its decision. Other evidence is admissible only in limited circumstances, where its admission is consistent with the court's supervisory role of the court.

*Kinexus* at paras. 16-17

*Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 at paras. 34-43

25. In this case, the petitioner has filed the Olsen Affidavit #1, which attaches:

- a. Terry Wiebe's complaint as Exhibit A;
- b. Ms. Olsen's response to the complaint as Exhibit B; and
- c. The Decision as Exhibit C.

26. The body of the Olsen Affidavit #1, paragraphs 2-12, sets out a factual narrative. That narrative is not part of the record of the proceeding. The petition takes issue only with the substance of the Decision and material outside of the record is inadmissible.

27. Other admissible material would include the documents produced in evidence at the hearing of the complaint and, if a party were to order it, the transcript of the oral evidence.

### **C. Standard of review**

28. Deference is required regarding all substantive issues. Deference requires a holistic and contextual reading of the decision under review. The court takes a “reasons first” approach that seeks to understand the decision in the context of the materials and submissions made to it. Intervention is not warranted merely because reasons are imperfect or do “not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred”.

*Vavilov* at paras. 91-92, 94, 97 and 102

29. The standard of review for the Tribunal’s finding of discrimination regarding a term or condition of a tenancy under s. 10 of the *Code* is reasonableness. The question of whether facts have been established that meet the identified legal test for discrimination is reviewable on a reasonableness standard, and the Tribunal is entitled to deference:

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

*Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 [**VANDU**] at para. 49

30. The standard of review for the compensation order under s. 37(2)(d)(iii) is patent unreasonableness.

*Silver Campsites Ltd. v. James*, 2013 BCCA 292 at para. 28

*University of British Columbia v. Kelly*, 2016 BCCA 271 at paras. 59-64

31. Section 59(4) states that a discretionary decision is patently unreasonable only if the discretion:

- (a) Is exercised arbitrarily or in bad faith;
- (b) Is exercised for an improper purpose;
- (c) Is based entirely or predominantly on irrelevant factors; or
- (d) Fails to take statutory requirements into account.

32. The BC Court of Appeal has said:

A patently unreasonable decision is one that is “clearly irrational” or “evidently not in accordance with reason” or “so flawed that no amount of curial deference can justify letting it stand.” ...

*Francescutti v. Vancouver (City)*, 2017 BCCA 242 at para. 45

**D. Is the finding that there was a tenancy relationship unreasonable?**

33. The Tribunal takes no position on this question.

**E. Is the finding of discrimination unreasonable?**

34. The Tribunal takes no position on this question.

**F. Should the Court consider the petitioner’s reliance on the *Charter*?**

35. The record indicates that the petitioner did not rely on the *Charter* before the Tribunal.

36. The general rule on judicial review is that the court will not consider an issue or argument not made to the tribunal at first instance. The Supreme Court of Canada has said:

Generally, this discretion will not be exercised in favour of an applicant on judicial review where the issue could have been but was not raised before the tribunal ...

... Care must be taken not to give parties an opportunity for a second hearing before a tribunal as a result of their failure to raise at the first hearing all of the issues they ought to have raised.

*Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61 [***Alberta Teachers***] at paras. 23 and 55

37. The BC Court of Appeal has said:

The Supreme Court has made it clear in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 94, 127–128, that when reviewing an administrative decision for reasonableness (or, in this case, patent unreasonableness), the reviewing court must be sensitive to the fact that a tribunal’s decision and reasoning process will be informed by and responsive to the arguments before it. As noted by Justice Saunders in *Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2016 BCCA 457 at para. 47, “... it is generally considered that a judge should not find a decision to be patently unreasonable based on a submission the Tribunal never heard”. See also the comments in *All Trans Financial Services Credit Union Limited v. Financial*

*Institutions Commission*, 2018 BCCA 270 at paras. 94–96; and *Evans v. New Westminster (Police Department)*, 2019 BCCA 317 at para. 24.

*Conklin v. University of British Columbia*, 2022 BCCA 333 at para. 29

38. In determining whether it would be appropriate to consider a new issue or argument, the court considers the rationales for the general rule, which include:
- a. respecting the legislator’s choice of the tribunal as the first instance decision-maker by giving the tribunal the opportunity to deal with the issue and make its views known, especially where the new issue relates to the tribunal’s specialized functions or expertise;
  - b. avoiding prejudice to the responding party; and
  - c. ensuring that the court has an adequate evidentiary record to consider the issue and the benefit of the tribunal's views and expertise on the issue.

*Alberta Teachers* at paras. 22 and 24-28

39. On the first rationale, a relevant factor is whether the party was practically precluded from raising the issue in question before the tribunal. On the second, a relevant factor is whether any party or the tribunal would be prejudiced if the issue is addressed for the first time on judicial review.

*R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)*, 2021 BCCA 67 at para. 74

40. In this case, the petitioner has not identified any reason why she was practically precluded from raising the *Charter* before the Tribunal so that the Tribunal could address her argument in its Decision.

**G. Is the compensation order patently unreasonable?**

41. The Tribunal takes no position on this issue.

**H. If the Court’s intervention is warranted, what relief is available?**

42. The general rule is that where a party succeeds on judicial review, the appropriate disposition is to order a reconsideration before the administrative decision-maker, unless exceptional circumstances indicate that the court should make the decision the legislation has assigned to the administrative body.

*Workers Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 at para. 51

*Vavilov* at paras. 141-42

43. The petitioner seeks a declaration that the Decision unreasonably infringes Ms. Olsen’s freedom of expression guaranteed by s. 2(b) of the *Charter*: petition, para. 2. The BC Court of Appeal has said:

... [A declaration] is a binding statement by the court establishing a right, power, duty or status. A declaration is a discretionary remedy. Even if a person establishes the existence of a right, power, duty or status, a court will generally not grant the remedy unless it considers that it will have practical effect and resolve an extant legal dispute.

*Pereira v. British Columbia (Workers’ Compensation Board)*, 2023 BCCA 195 at para. 16 (see generally paras. 14-18)

44. The Tribunal does not seek costs and there is no basis for an order of costs against it.

*18320 Holdings Inc. v. Thibeau*, 2014 BCCA 494 at paras. 55-59

**Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Kirsten Chase Olsen made March 21, 2025.
2. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated: May 15, 2025

---

, Counsel for the Tribunal

The Tribunal’s address for service:

British Columbia Human Rights Tribunal  
1270-605 Robson Street  
Vancouver, BC V6B 5J3  
Attn:

E-mail address for service:

Name of the petition respondent's lawyer: , Counsel for the British  
Columbia Human Rights Tribunal



This is the 1st Affidavit  
of Kirstin Olsen in this case  
and was made on MARCH 21 2025

NO  
ABBOTSFORD REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

Kirstin Chase Olsen  
  
(the Petitioner)

AND:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe  
  
(the Respondent)

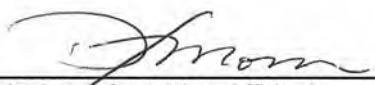
**AFFIDAVIT**

I, Kirstin Olsen, SWEAR THAT:

1. I am the Petitioner in this matter and, as such, have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based on information and belief and, where so stated, believe them to be true.
2. At all material times, I was the owner of a property in a rural region of British Columbia.
3. I met the Respondent, Theresa (Terry) Wiebe ("Wiebe") in 2013. Wiebe would work for my business on my property. At times, Wiebe would sleep on my couch over night rather than go home.
4. In 2014, Wiebe moved their motorhome on to my property so that they would not have to leave their cat for as long.
5. In late 2016 or early 2017, Wiebe informed me that they wanted to change their gender identity.
6. While I am not aware of the exact dates, it is my understanding that Wiebe went on and off hormone treatment between 2016 and 2018.
7. Twice in 2017, Wiebe was hospitalized. Both times they told me it was due to their hormone treatment.
8. The second time Wiebe was hospitalized, they were out of town. I helped financially to arrange their travels home.

9. I remember one occasion when Wiebe asked me whether they could continue to live on my property if they had top surgery. I did not confirm one way or another but did express to Wiebe that I did not support top surgery.
10. My reason for not supporting top surgery is that my family has a history of breast cancer, and my mother had a mastectomy.
11. Unrelated to Wiebe's gender identity, starting in 2017, my relationship with Wiebe began to deteriorate. These incidents are described in the BC Human Rights Tribunal decision.
12. On September 19, 2018, I asked Wiebe to move off my property.
13. Wiebe filed a complaint with the Human Rights Tribunal alleging that I discriminated against them in their tenancy based on their gender identity or expression contrary to section 10 of the *Human Rights Code*. Attached and marked as **Exhibit "A"** is a true copy of that complaint.
14. I filed a response to Wiebe's complaint. Attached and marked as **Exhibit "B"** is a true copy of that response.
15. The BC Human Rights Tribunal released their decision on January 22, 2025. Attached and marked as **Exhibit "C"** is a true copy of that decision.

**SWORN BEFORE ME** at the  
City of [REDACTED] British Columbia,  
on March 21 2025

  
\_\_\_\_\_  
A Commissioner for taking Affidavits  
for British Columbia

  
\_\_\_\_\_  
Kirstin Olsen

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF Kirstin Olsen  
MADE BEFORE ME AT BC  
THIS 21 DAY OF March 2025  
[Signature]  
A COMMISSIONER FOR TAKING AFFIDAVITS  
FOR BRITISH COLUMBIA





# FORM 1.1 – INDIVIDUAL COMPLAINT

Use This Form to File Your Own Complaint

## BC Human Rights Tribunal

1270 - 605 Robson Street  
 Vancouver BC V6B 5J3  
 Phone: 604-775-2000 Fax: 604-775-2020  
 Toll Free: 1-888-440-8844 TTY: 604-775-2021



Tribunal Stamp

### GENERAL INSTRUCTIONS

- For detailed Instructions select the **Help** buttons as you go or check **All Instructions** now
- See the Tribunal's website for further information – [www.bchrt.bc.ca](http://www.bchrt.bc.ca)
- Your information will NOT be automatically saved by the Tribunal
- Click on **Save** at any time to save your form to your computer
- **Email** us your form by attaching a saved copy and sending it to [BCHumanRightsTribunal@gov.bc.ca](mailto:BCHumanRightsTribunal@gov.bc.ca)
- OR click on **Print** and **fax, mail** or **hand deliver** a copy of your form to us
- Keep a copy of your Complaint Form and all of your documents

### For assistance with filing your complaint contact

<b>BC Human Rights Clinic</b>	<b>The Law Centre</b>
Tel: 604-622-1100	Tel: 250-385-1221
Toll-Free: 1-855-685-6222	
<a href="http://www.bchrc.net">www.bchrc.net</a>	<a href="http://www.thelawcentre.ca">www.thelawcentre.ca</a>

### YOUR INFORMATION

FIRST NAME** <b>THERESA</b>	LAST NAME** <b>WIEBE</b>
NAME OF LAWYER OR OTHER PERSON WHO REPRESENTS YOU IN THIS COMPLAINT (IF APPLICABLE):	
MAILING ADDRESS:**	
CITY:**	PROVINCE** <b>BC</b>
<p><b>Purpose of collecting contact information:</b> The Tribunal uses your contact information to process the complaint and conduct surveys to evaluate and improve its services. The Tribunal will give your mailing address to the other parties for the exchange of information and other documents. Your additional contact information will only be given to the other parties if you agree.</p> <p><input checked="" type="checkbox"/> Check here to tell the Tribunal not to disclose the additional contact information below to the Respondent.</p>	

**CONTACT INFORMATION REDACTED**

**B.C. HUMAN RIGHTS TRIBUNAL**

**YOUR COMPLAINT**

**STEP 1: NAME THE RESPONDENT(S)**

Name each individual person, business or organization you believe is responsible for the discrimination.

An individual Respondent might be a co-worker, boss, building manager, landlord, restaurant server, employee at a recreation facility, health care provider or government official.

A business or organizational Respondent might be the company you worked for, a newspaper, a school board, a trade union, a society or a strata corporation.

**Respondent 1:**

NAME ** KIRSTIN CHASE OLSEN			
RELATIONSHIP TO YOU: ** FORMER LANDLORD			
MAILING ADDRESS: **			
CITY: **		PROVINCE: ** BC	POSTAL CODE: **
TELEPHONE: **	FACSIMILE	CELL PHONE: **	
EMAIL: **			

**STEP 2: AREA(S) & GROUND(S) OF DISCRIMINATION**

List the area(s) and ground(s) of discrimination that apply to your complaint:

Your complaint must show that the Respondent's conduct took place in an area of daily life protected under the *BC Human Rights Code*. These are called "areas of discrimination".

It must also show that you have a personal characteristic(s) protected under the *Code*. These are called "grounds of discrimination".

These protected personal characteristics may be:

- actual (for example, your ancestry or age), or
- perceived (for example, someone thinks that you have or may develop a disability in the future, or makes homophobic comments regardless of your sexual orientation).

Not all grounds of discrimination apply to all areas of discrimination.

**Respondent 1:**

<b>Area of Discrimination</b>			
<input type="radio"/> Accommodation, service or facility	<input type="radio"/> Employment	<input type="radio"/> Employment advertisement	<input type="radio"/> Publication
<input type="radio"/> Purchase of property	<input checked="" type="radio"/> Tenancy	<input type="radio"/> Unions and associations	<input type="radio"/> Wages
<b>Grounds of Discrimination</b>			
<input type="checkbox"/> Age	<input type="checkbox"/> Ancestry	<input type="checkbox"/> Colour	<input type="checkbox"/> Criminal Conviction
<input type="checkbox"/> Family Status	<input checked="" type="checkbox"/> Gender Identity or Expression	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Mental Disability
<input type="checkbox"/> Physical Disability	<input type="checkbox"/> Place of Origin	<input type="checkbox"/> Political Belief	<input type="checkbox"/> Race
<input type="checkbox"/> Religion	<input type="checkbox"/> Sex	<input type="checkbox"/> Sexual Orientation	<input type="checkbox"/> Source of Income

**STEP 3: RESPONDENTS' CONDUCT**

Answer these questions to show that the Respondent's conduct could be discrimination under the *Human Rights Code*

**Respondent 1:**

**1. What did the Respondent do?**

Date (YY-MM-DD)	What Happened?
2018-09-25	LANDLORD SERVED ME AN EVICTION NOTICE, IN PERSON, (RTA 549)

**2. What is the adverse impact on you?--**

ONGOING: INJURY TO DIGNITY, MY FEELINGS, AND SELF RESPECT; FORCED TO MOVE MY HOME ON DEC 31, 2018 INCLUDING DISMANTLING A 16 x 20 FT DECK, A 16 FT FENCE, AND 32x26 FT FREESTANDING ROOF ALL BUILT TO SUPPORT MY PERMANT, PRIMARY RESIDENCE ON MY LANDLORD'S PROPERTY IN MY 24FT RV. STOPPED TAKING GENDER AFFIRMING HORMONE -- OF RECOURSE, ONGOIN ... L ISSUES.

**3. How was each ground of discrimination a factor in the adverse impact?--**

LANDLORD MADE A SERIES OF TRANSPHOBIC COMMENTS TOWARD ME BEFORE EVICTING ME FOR REASONS SHE LIED ABOUT THINGS LIKE "I SAID I WASN'T COMFORTABLE BEING AROUND IT" AFTER ASKING IF I WAS PLANNING SURGERY, AND " YOU DON'T HAVE TO MUTILATE YOUR BODY, YOU'RE FINE AS A LESBIAN."

**STEP 4: PART A - TIME LIMIT TO FILE COMPLAINT**

To file your complaint on time, you must file it within one year of each Respondent's conduct (acts or omissions). If only some of the conduct happened in the last one year, your complaint may be filed in time if all of that Respondent's conduct is related or similar and close enough in time.

Answer the questions in **STEP 4: Part A** to show whether your complaint is filed in time. If some or all of the complaint may be filed late, you will also complete **STEP 4: Part B**.

**1. Did all the conduct you say is discrimination happen in the last one year?**

Yes  No

**Respondent 1:**

**2. Is all the conduct related or similar and, if so, how?--**

No  Yes EVERYTHING THAT HAPPENED SURROUNDS THE FACT THAT MY LANDLORD IS UNCOMFORTABLE AROUND ME AS A TRANSGENDER PERSON

**STEP 4: PART B - TRIBUNAL MAY ACCEPT LATE COMPLAINTS**

If ANY of the conduct you say is discrimination happened more than one year ago, part or all of your complaint MAY be filed late.

Answer the questions in **STEP 4: PART B**, even if you believe that all of your complaint is filed on time because it is about similar or related events with at least one event in the last one year.

The Tribunal may accept a late complaint if it decides that accepting the late-filed complaint:

- is in the public interest; and
- no one would be substantially prejudiced (harmed) by the delay.

**1. Why did you wait to file your complaint?--**

BECAUSE I'M IN THE PROCESS OF A JUDICIAL REVIEW FOR AN RTB DISPUTE RESOLUTION DECISION OF "NO JURISDICTION" AND WANTED TO FOCUS ON THAT FIRST. AS SOMEONE WITH A BRAIN INJURY AND DISABILITIES, I NEEDED TO BE ABLE TO FOCUS ON ONE THING AT A TIME.

**2. Why should the Tribunal accept your complaint?--**

THE EVICTION HAPPENED WITHIN THE LAST YEAR, SOME OF THE EVIDENCE I'LL BE SUBMITTING IF THE TRIBUNAL TAKES MY CASE IS FROM SLIGHTLY MORE THAN A YEAR BUT ILLUSTRATES THE PATTEREN OF TRANSPHOBIA ON MY LANDLORD'S

[Empty box]

**3. Why would the delay in filing not cause substantial prejudice to any other person?--**

FROM THE MOMENT I TOLD MY LANDLORD/FRIEND THAT I WAS CHANGING MY GENDER, THE DYNAMICS OF ALL ASPECTS OF THE RELATIONSHIP STEADILY DECLINED. THIS DIRECTLY LED TO MY EVICTION, AND THE EVENTS SURROUNDING IT.

**STEP 5: OTHER RELATED PROCEEDINGS**

The Tribunal may defer your complaint (put your complaint on hold) until another proceeding capable of dealing with your human rights complaint, such as a grievance, has been completed. If your complaint is deferred, the Tribunal will take no further steps until the deferral ends.

Is there another proceeding?--

Yes  No

IT IS MY UNDERSTANDING THAT THE (RTB CANNOT RESOLVE A HUMAN RIGHTS ISSUE)

**STEP 6: REMEDIES**

**1. List the type of remedies you want:--**

CEASE AND REFRAIN ORDER, DECLARATORY ORDER, COMPENSATION FOR EXPENSES, INTEREST ON EXPENSES, COMPENSATION FOR INJURY TO DIGNITY, FEELINGS, AND SELF RESPECT

**2. List any other person or organization affected by these remedies:**

N/A

**STEP 7: SETTLEMENT MEETING**

The Tribunal can provide a mediator to resolve the complaint informally and voluntarily. This is called a "settlement meeting". This is a free service. What is said during the settlement meeting is confidential and cannot be used against either party later.

Do you want to participate in a settlement meeting?--

Yes  No

**STEP 8: COMPLETE THE COMPLAINT FORM**

After you have filled out the complaint form:

- check the box to confirm that the information is true and accurate
- keep a copy of your complaint form and your documents
- send your complaint form to the Tribunal

Check the following for:

I confirm that the information in this complaint form is true and accurate to the best of my knowledge and belief.--

---

## WHAT HAPPENS NEXT?

After the Tribunal has reviewed your complaint, it will tell you one of the following:

- your complaint form is complete, the Tribunal will accept it for filing, and a copy will be sent to the Respondent(s)
- your complaint form is incomplete and the Tribunal will ask you for further information by a certain date
- your complaint is deferred pending the outcome of other proceedings
- your complaint cannot be accepted for filing because:
  - your complaint is not covered by the BC *Human Rights Code* (it may be covered by the *Canadian Human Rights Act*)
  - your complaint does not set out enough information to support a complaint of discrimination under the BC *Human Rights Code*
  - your complaint was filed late and the Tribunal has decided not to accept it.

---

## PROTECTION FROM RETALIATION

After a complaint is filed a complainant, anyone named in a complaint, a witness or anyone who assists in a complaint is protected from retaliation for their involvement in the complaint. You must show:

- a complaint was filed with the Tribunal;
- the person who retaliated knew about the complaint; and
- it is reasonable to conclude that the person intended to retaliate against someone because of their involvement in the complaint.

As of May 14, 2015, the Code also protects you from retaliation because someone thought you might make a complaint, be named in a complaint, or give evidence or assist in a complaint.

If you or someone else has been retaliated against, complete a Retaliation Complaint Form available on our website under Forms.

---

## HELP FILING YOUR COMPLAINT

For assistance with filing your complaint contact:

**BC Human Rights Clinic**  
 300 - 1140 W Pender Street  
 Vancouver BC V6E 4G1  
 Tel: 604-622-1100  
 Fax: 604-685-7611  
 Toll Free: 1-855-685-6222  
 www.bchrc.net

**The Law Centre – University of Victoria Faculty of Law**  
 225 - 850 Burdett Avenue  
 Victoria BC V8W 0C7  
 Tel: 250-385-1221  
 Fax: 250-385-1226  
 www.thelawcentre.ca

---

## PRIVACY NOTICE

The Tribunal collects personal information to process complaints filed under the *Human Rights Code* and to conduct surveys to evaluate and improve its services under s. 59.1 of the *Administrative Tribunals Act*.

The personal information in this form may be disclosed to members of the public. This is because the Tribunal's process is public:

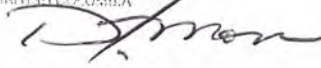
- The Tribunal publishes most decisions on its website
- The Tribunal publishes a hearing schedule (list of upcoming hearings) with the parties' names and the area and ground of a complaint
- After a complaint is on the hearing schedule, the public has access to information, including the complaint and response forms (except contact information)
- Hearings are open to the public.

You can ask the Tribunal to limit the information it makes public. However, the Tribunal will only do so if it decides that your privacy interests outweigh the public interest in access to the Tribunal's proceedings.

For more information, contact the Tribunal Registrar at the address or phone number at the top of this form.

THIS IS EXHIBIT : B \* REFERRED TO IN THE  
AFFIDAVIT OF Kirstin Olsen  
MADE BEFORE ME AT BC  
THIS 21 DAY OF March 2025

A COMMISSIONER FOR TAKING AFFIDAVITS  
FOR BRITISH COLUMBIA





## FORM 2 – COMPLAINT RESPONSE

Use This Form to Respond to a Complaint

### BC Human Rights Tribunal

1270 - 605 Robson Street  
 Vancouver BC V6B 5J3  
 Phone: 604-775-2000 Fax: 604-775-2020  
 Toll Free: 1-888-440-8844 TTY: 604-775-2021

Tribunal Stamp

### GENERAL INSTRUCTIONS

- For detailed instructions select the **Help** buttons as you go or check **All Instructions** now
- See the Tribunal's website for further information - [www.bchrt.bc.ca](http://www.bchrt.bc.ca)
- Your information will NOT be automatically saved by the Tribunal
- Click on **Save** at any time to save your form to your computer
- **Email** us your form by attaching a saved copy and sending it to [BCHumanRightsTribunal@gov.bc.ca](mailto:BCHumanRightsTribunal@gov.bc.ca)
- OR click on **Print** and **fax, mail** or **hand deliver** a copy of your form to us
- Keep a copy of your Response Form and all of your documents

### For assistance with filing your response go to

**BC Human Rights Clinic**      **The Law Centre**  
[www.bchrc.net](http://www.bchrc.net)      Tel: 250-385-1221  
[www.thelawcentre.ca](http://www.thelawcentre.ca)

### YOUR INFORMATION

FIRST NAME: Kirstin	LAST NAME: Olsen
NAME OF LAWYER OR OTHER PERSON WHO REPRESENTS YOU IN THIS COMPLAINT (IF APPLICABLE):  	
CITY: _____	
PROVINCE: BC	POSTAL CODE: _____
<p><b>Purpose of collecting contact information:</b> The Tribunal uses your contact information to process the complaint and conduct surveys to evaluate and improve its services. The Tribunal will give your mailing address to the other parties for the exchange of information and other documents. Your additional contact information will only be given to the other parties if you agree.</p> <p><input type="checkbox"/> Check here to tell the Tribunal not to disclose the additional contact information below to the other parties.</p>	
TELEPHONE: _____	FACSIMILE: _____
CELLULAR: _____	
EMAIL: _____	

**YOUR RESPONSE****STEP 1: NAME OF COMPLAINANT(S)**

Print the Complainant's name as it appears on the complaint form.

Print the Tribunal Case Number found in the letter we sent to you notifying you of this complaint.

COMPLAINANT'S NAME: Theresa Wiebe	TRIBUNAL CASE NUMBER: 19808
--------------------------------------	--------------------------------

**STEP 2: NAME RESPONDENT(S)**

This is the response of:

**Respondent 1:**

NAME: Kirstin Olsen
EMAIL:

If there is a spelling or other error in the complaint form, the correct version of the Respondent's name is:

--

**STEP 3: AUTHORITY IF ACTING ON BEHALF OF ANOTHER (if applicable)**

Set out your authority to act for each Respondent you named in STEP 2 (other than yourself if you are a Respondent):

**Respondent 1: Kirstin Olsen**

YOUR AUTHORITY:
-----------------

**STEP 4: Part A – FACTS ALLEGED IN THE COMPLAINT FORM**

A Respondent may agree with some, none, or all of what the complaint says. Your response in **STEP 4: Part A** will tell the Tribunal where you and the Complainant disagree. Be specific about dates and what happened.

**Respondent 1: Kirstin Olsen**

Say which facts, if any, in the complaint form you **AGREE** with:

None
------

Say which facts in the complaint form you **DISAGREE** with and explain your version of what happened:

1. Complainant lived in their 1983 motor home on my property at 2282 Hwy 6 not pursuant to a tenancy but rather a personal agreement between friends. Wiebe was permitted to live on my property in their motor home under a license to occupy, beginning in July 2014.
2. As a contribution toward electricity and water costs the complainant paid \$100 a month until May 2017, then \$200 a month starting in June 2018 as they expanded their recycling business. This pittance was never paid in cash and was always worked off by Wiebe, in addition to me paying them hundreds of dollars more each month for work around the property.
3. The complainant was asked to leave the property on Sept 11, 2018 via phone call, reflecting the personal

agreement we had. These calls were clandestinely recorded by the complainant and support the respondent's following position.

4. Wiebe was asked to leave not because they identified as a man; rather because a) I, Kirstin Olsen, intended to move my elderly mother onto my land into the area then occupied by the complainant. My mother moved into that area in August 2019 and resides there now. b) Complainant was operating a recycling business on my property which overtime significantly expanded in scope taking up a significant portion of my property creating garbage piles and an unsightly premise c) The complainant had a long history of disputes and altercations with myself, my friends, and two other tenants on the land, having created considerable stress and anxiety for me and resulting in broken trust of the complainant.

5. I, Kirstin Olsen, the respondent, deny discrimination against the complainant on the grounds of gender identity or expression, and puts the complainant to the strict proof thereof.

## **STEP 4: Part B – JUSTIFICATION FOR RESPONDENT'S CONDUCT AND OTHER DEFENCES**

### **Respondent 1: Kirstin Olsen**

Set out any other or additional defence(s) to the complaint:

6. Wiebe had no tenancy agreement on my property under the RTA or MHPTA. I had allowed them to park their motor home and run a recycling business on my property out of friendship and empathy. RTB decision File No: 2102850 declined jurisdiction under either Act.

7. Judicial Review No. S193664 of that dispute resolution resulted in a decision to be sent back to the RTB for re-arbitration for a technicality of procedural fairness as the judge felt Wiebe did not know that the RTB may decline jurisdiction, and that the arbitrator did not "show her work" in how she arrived at the no jurisdiction decision.

8. No re-arbitration has taken place to date.

9. My Notice of Eviction Under License to Occupy was served to the complainant on Nov 28, 2018 after the RTB dispute decision of no jurisdiction, providing them with two months notice to vacate my property. The RTA eviction form noted by the complainant in their HRT complaint application is null and void. The eviction date on the License to Occupy eviction notice was Jan 31, 2019.

10. All supporting documents, exhibits, and affidavits will be submitted with the respondent's, Kirstin Olsen's, application for dismissal of this complaint.

## **STEP 5: OTHER RELATED PROCEEDINGS**

The Tribunal may defer a complaint (put it on hold) until another proceeding capable of dealing with a human rights complaint, such as a grievance, has been completed. If a complaint is deferred, the Tribunal will take no further steps until the deferral ends.

Is there another proceeding?

Yes     No

### **1. What is the other proceeding and when did it start?**

The proceeding is a re-arbitration at the Residential Tenancy Board regarding decision File No. 2102850. Re-arbitration was allowed by the judge's decision of complainant's Judicial Review No. S193664. The complainant has not established a tenancy existed for the parking of their motor home on my property.

### **2. What dates have been set?**

I have not received notification from the complainant or the RTB regarding a RTB re-arbitration date.

**3. What remedies does the Complainant seek?**

The complainant must establish a tenancy existed in order to file a HRT complaint regarding a tenancy.

**4. Has there been a decision?**

No

**5. Anything else the Tribunal needs to know?**

All supporting documents, exhibits, and affidavits will be submitted with the respondent's, Kirstin Olsen's, application for dismissal of this complaint under section 27(1)(c) of the Code.

**6. Do you want the Tribunal to defer considering your complaint?**

Yes  No

EXPLAIN WHY

I, the respondent, Kirstin Olsen, put the complainant to the strict proof that a tenancy existed between the complainant and the respondent.

**STEP 6: COMPLETE THE RESPONSE FORM**

After you have filled out the response form:

- keep a copy of the response form and your documents
- make a copy of the response form for the Complainant and any other Respondent(s)
- send your response form to the Tribunal

**Check the following for:**

I confirm that the information in this response form is true and accurate to the best of my knowledge and belief.

I confirm that I am sending a copy of this form with any attachments to the Complainant and any other Respondent(s).

**STEP 7: DISMISSAL APPLICATION**

A Respondent can apply to dismiss a complaint within the time limit in the *Rules of Practice and Procedure*. You can wait to apply to dismiss the complaint, or you can file an application with your response form.

You must comply with your disclosure requirements when you apply to dismiss a complaint. This includes giving the complainant a copy of all documents that may relate to the complaint. For more information, see "Get help with the Tribunal process" on the website [www.jochfrt.bc.ca](http://www.jochfrt.bc.ca).

**I have complied with the disclosure requirements under the Tribunal's Rules and attach a Form 7.2 – Dismiss Application to this response form asking that the Tribunal dismiss the complaint without a hearing.**

Yes  No

**WHAT HAPPENS NEXT?**

After the Tribunal has received your response form, the Tribunal may:

- defer consideration of the complaint pending the outcome of another proceeding
- contact you to advise of the next step or to set up a prehearing conference
- set a schedule for submissions on your application to dismiss (if you attached one to your response form).

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## PRIVACY NOTICE

The Tribunal collects personal information to process complaints filed under the *Human Rights Code* and to conduct surveys to evaluate and improve its services under s. 59.1 of the *Administrative Tribunals Act*.

The personal information in this form may be disclosed to members of the public. This is because the Tribunal's process is public:

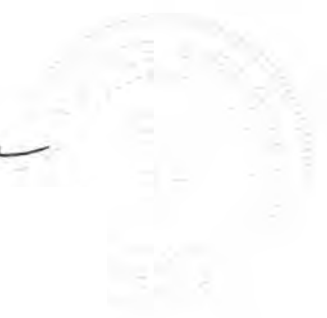
- The Tribunal publishes most decisions on its website
- The Tribunal publishes a hearing schedule (list of upcoming hearings) with the parties' names and the area and ground of a complaint
- After a complaint is on the hearing schedule, the public has access to information, including the complaint and response forms (except contact information)
- Hearings are open to the public.

You can ask the Tribunal to limit the information it makes public. However, the Tribunal will only do so if it decides that your privacy interests outweigh the public interest in access to the Tribunal's proceedings.

For more information, contact the Tribunal Registrar at the address or phone number at the top of this form.

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF Kirstin Olsen  
MADE BEFORE ME AT BC.  
THIS 21 DAY OF MARCH 2025

A COMMISSIONER FOR TAKING AFFIDAVITS  
FOR BRITISH COLUMBIA

A handwritten signature in cursive script, appearing to read "Simon".

Date Issued: January 22, 2025

File: CS-001192

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**

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**REASONS FOR DECISION**

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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*.

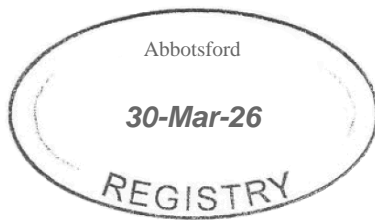
[193] Under s. 37(2)(a) of the *Code*, we order Ms. Olsen to cease the contravention of the *Code* and refrain from committing the same or similar contraventions.

[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



This is the 1st Affidavit  
of Marta Burghardt in this case  
and was made on 30/Mar/2026

NO. ABB-S-S-07078  
ABBOTSFORD REGISTRY

## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Kirstin Chase Olsen

(the Petitioner)

AND:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

(the Respondents)

### AFFIDAVIT

I, MARTA BURGHARDT, Legal Administrative Assistant, of  
AFFIRM THAT:

1. I am employed by RDM Lawyers LLP, Counsel for the Petitioner in this Action and, as such, have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based on information and belief and, where so stated, believe them to be true.
2. Counsel for the Petitioner is Ms. Tabitha Ewert at RDM Lawyers LLP.
3. The Petition was submitted for filing on March 21, 2025.
4. On March 24, 2025, I received a registry notice from Court Services Online that the Petition was rejected as there was no time estimate for the hearing included. Attached hereto and marked as **Exhibit "A"** is a true copy of the registry notice.
5. On March 25, 2025, the corrected Petition was re-submitted for filing. Attached hereto and marked as **Exhibit "B"** is a true copy of the Petition filed March 25, 2025.
6. There were no changes made to the Petition other than adding the time estimate.
7. On June 20, 2025, we drafted a letter to counsel for the Respondents advising them of the reason for the Petition being filed one day after the 60-day time limit and asked that they consent to an extension of the time limit for this petition. Attached hereto and marked as **Exhibit "C"** is a true copy of the letter dated June 20, 2025.

- 8. On June 24, 2025, Counsel for the Response Theresa (Terry) Wiebe consented to our request for an extension of the time limit for our petition. Attached hereto and marked as **Exhibit "D"** is a true copy of the letter dated June 24, 2025.
- 9. On June 25, 2025, Counsel for the Respondent British Columbia Human Rights Tribunal consented to our request for an extension of the time limit for our petition. Attached hereto and marked as **Exhibit "E"** is a true copy of the letter dated June 25, 2025.

**AFFIRMED BEFORE ME** at the  
City of \_\_\_\_\_ British Columbia,  
on March 30, 2026



\_\_\_\_\_  
A Commissioner for taking Affidavits  
for British Columbia

  
\_\_\_\_\_  
MARTA BURGHARDT



THIS IS EXHIBIT "A" REFERRED TO IN THE  
 AFFIDAVIT OF Marta Buihvard  
 MADE BEFORE ME AT  
 THIS 30 DAY OF March 2026  
*off*  
 A COMMISSIONER FOR TAKING AFFIDAVITS  
 FOR BRITISH COLUMBIA

**Court Services Online**

**Registry Notice**

**Package ID: 3896179**

**Submission Date: March 21, 2025**

Account ID: 30798

RDM Lawyers LLP

Client ID: 75875

Court Case File #:

Client File #: 57013-001 (Olsen)

Documents:

1	Petition to the Court	Rejected
2	Affidavit	Rejected
3	Electronic Filing Statement -	Rejected

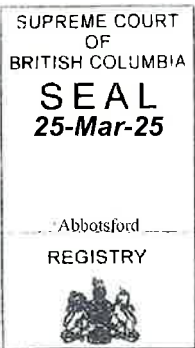
Registry Reasons:

Reason 1: Other

24-MAR-2025

There is no time estimate for the hearing of the Petition. -AS

Please keep a copy of this report for your records.



THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF Maria Burhardt MADE BEFORE ME AT THIS 30 DAY OF March 20 26 A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

Court File No. ABB-S-S-07078

NO ABBOTSFORD REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Kirstin Chase Olsen

(the Petitioner)

AND:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

(the Respondent)

PETITION TO THE COURT

ON NOTICE TO:

British Columbia Human Rights Tribunal

Theresa (Terry) Wiebe

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

This matter is an application for judicial review.

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

- [X] the person(s) named as petitioner(s) in the style of proceedings above [ ] \_\_\_\_\_ (the petitioner(s))

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

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

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

**Time for response to petition**

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

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

The address of the registry is:

Abbotsford Registry  
32375 Veterans Way,  
Abbotsford, BC V2T 0K1

The address for service of the Petitioner is:

RDM Lawyers LLP

Fax number address for service:

E-mail address for service:

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

Tabitha Ewert  
RDM Lawyers LLP

## CLAIM OF THE PETITIONER

### PART 1: ORDER(S) SOUGHT

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

### PART 2: FACTUAL BASIS

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

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

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

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

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

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

### **Olsen's Motives for the Impugned Speech**

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

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

### **Wiebe and Olsen's Complex Personal Relationship**

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

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

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

**PART 3: LEGAL BASIS**

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

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

**Standard of Review**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PART 4: MATERIALS TO BE RELIED ON**

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

DATED: March 21, 2025




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Tabitha Ewert  
Lawyer for the Petitioner

<b>To be completed by the court only:</b>	
Order made	
<input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this petition	
<input type="checkbox"/> with the following variations and additional terms:	
_____	
_____	
_____	
Date [dd/mmm/yyyy]: _____	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Associate Judge



Abbotsford Office

Langley Office

www.rdmlawyers.com

Managing Lawyer: Tabitha Ewert

1  
3

Legal Administrative Assistant:

1

Our File: 57013-001

June 20, 2025

Via Email:

THIS IS EXHIBIT \* C \* REFERRED TO IN THE  
AFFIDAVIT OF Marla Burdhardt  
MADE BEFORE ME AT \_\_\_\_\_  
THIS 30 DAY OF March '2026  
JA  
A COMMISSIONER FOR TAKING AFFIDAVITS  
FOR BRITISH COLUMBIA

**Attention:**

Dear Counsel:

**Re: Olsen v. British Columbia Human Rights Tribunal et al.  
BCSC Action No.: ABB-S-S-07078**

Please be advised that we had submitted the Petition for filing on March 21, 2025. We received a notice that it had been rejected on March 24, 2025, stating that the reason for the rejection was that we had mistakenly excluded the time estimate for the hearing. Attached for reference, is a copy of Court Services Online Registry Notice showing the submission date and the date of the rejection. We corrected our petition and re-submitted it for filing on March 25, 2025. We confirm that nothing else was changed in the Petition from the version that was originally submitted for filing.

We acknowledge that the result was that the Petition was filed one day after the 60-day time limit. I ask for your consent to our position that the Court should extend the time limit for this petition under s.57(2) of the ATA.

Yours truly,

**RDM LAWYERS LLP**

Per: Tabitha Ewert  
Tabitha Ewert

TAE/mb  
Encl.

cc: ; British Columbia Human Rights Tribunal - \_\_\_\_\_ !



**Court Services Online**

**Registry Notice**

**Package ID: 3896179**

**Submission Date: March 21, 2025**

Account ID: 30798

Client ID: 75875

Court Case File #:

Client File #: 57013-001 (Olsen)

Documents:

1	Petition to the Court	Rejected
2	Affidavit	Rejected
3	Electronic Filing Statement -	Rejected

Registry Reasons:

Reason 1: Other

24-MAR-2025

There is no time estimate for the hearing of the Petition. -AS

Please keep a copy of this report for your records.

Advancing Dignity, Equality and Justice Since 1971

Please direct your reply to:

THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF Maria Burdhardt  
MADE BEFORE ME AT \_\_\_\_\_  
THIS 30 DAY OF March '2026  
[Signature]  
A COMMISSIONER FOR TAKING AFFIDAVITS  
FOR BRITISH COLUMBIA

File number: 25-0094222

June 24, 2025

**Via Email**

RDM Lawyers LLP

Dear Ms. Ewert,

**Re: Olsen v. British Columbia Human Rights Tribunal et al. BCSC Action No.: ABB-S-S-07078**

We consent to your position that the Court should extend the time limit for your petition under s.57(2) of the ATA.

Sincerely,

**Community Legal Assistance Society**



Lawyer  
SZ/JL



# British Columbia Human Rights Tribunal

Internet: [www.bchrt.bc.ca](http://www.bchrt.bc.ca)

June 25, 2025

RDM Lawyers LLP

THIS IS EXHIBIT "E" REFERRED TO IN THE  
AFFIDAVIT OF Maxin Burdhardt  
MADE BEFORE ME AT  
THIS 30 DAY OF March 2026

[Signature]  
A COMMISSIONER FOR TAKING AFFIDAVITS  
FOR BRITISH COLUMBIA

Via email:

1 1

Attention: Tabitha Ewert

Dear Ms. Ewert:

RE: **Kirstin Chase Olsen v. Theresa (Terry) Wiebe et al; Abbotsford Registry Court File No. ABB-S-S-07078**

The Tribunal also consents to your position that the Court extend the time limit for your petition under s. 57(2) of the ATA.

Yours truly,

[Signature]

Legal Counsel  
KH/tbm

This is the 1st affidavit  
of Brianne Moore in this case  
and was made on May 26, 2026

No. ABB-S-S-07078  
Abbotsford Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*, R.S.B.C. 1996, c. 241

BETWEEN:

KIRSTIN CHASE OLSEN

PETITIONER(S)

AND:

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL  
AND THERESA (TERRY) WIEBE

RESPONDENTS

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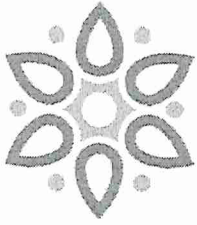
**AFFIDAVIT #1 OF BRIANNE MOORE**

---

I, Brianne Moore, of \_\_\_\_\_, AFFIRM AND SAY  
THAT:

1. I am a Paralegal at the British Columbia Human Rights Tribunal [the **Tribunal**] as such I have personal knowledge of the facts and matters deposed to in this affidavit.
2. Attached to this affidavit and marked as Exhibit "A" is a true and accurate copy of a letter dated May 15, 2025 from the Tribunal to the other parties.
3. Attached to this affidavit and marked as Exhibit "B" is a true and accurate copy of email correspondence dated May 29, 2025 from the Tribunal to the other parties.





**British Columbia  
Human Rights  
Tribunal**

May 15, 2025

RDM Lawyers LLP

Via email:

Via email:

Attention:

Attention:

Dear Parties:

**RE: Kirstin Chase Olsen v. Theresa (Terry) Wiebe et al; Abbotsford Registry Court File No. ABB-S-S-07078**

Please find enclosed for service on you an unfiled copy of the Tribunal’s Response to Petition, and a filed copy is to follow once we receive it back from the registry.

**Record**

Ms. Olsen’s affidavit in support of her petition includes the complaint, response, and decision.

Terry Weibe’s response says they rely on the record of the proceeding.

Before the hearing of the petition, the parties should identify whether other parts of the record need to be filed. As I understand it, this would include the exhibits entered at the hearing and it is not clear to me that those are needed in relation to the issues raised by the petition. There is no transcript of the evidence absent one of the parties ordering it.

I do not intend to take steps to file a further affidavit, unless one or both parties indicates that they intend to rely on the exhibits.

Yours truly,

Legal Counsel  
KH/tbm

Enclosures

This is Exhibit “ A ” referred to in the Affidavit #1 of E

Affirmed before me this 26th day of May, 2026.

A Commissioner for taking Affidavits within British Columbia

**From:**  
**To:**  
**Cc:**  
**Subject:** Kirstin Chase Olsen v. Theresa (Terry) Wiebe et al; Abbotsford Registry Court File No. ABB-S-S-07078  
**Date:** Thursday, May 29, 2025 2:29:31 PM  
**Attachments:** [image001.png](#)

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Hello,

I forgot to mention in my last letter that it is unclear from the petition whether the required notice has been given to the Attorney General of British Columbia. I thought I should draw this to your attention.

Kirstin Chase Olsen

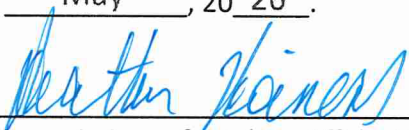


The British Columbia Human Rights Tribunal acknowledges the traditional territories of the many diverse Indigenous peoples in the geographic area that we serve. The Tribunal's office is located on traditional unceded territories of the Coast Salish peoples, including the territories of the x<sup>w</sup>məθk<sup>w</sup>əyəm (Musqueam), Skxwú7mesh (Squamish), and səliiwətaʔ (Tsleil-Waututh) Nations.

This email and any attachments may contain confidential information or information that is protected by privilege. If you received this email in error please immediately delete it and any attachments immediately and notify me. Thank you

This is Exhibit "B" referred to in the  
Affidavit #1 of \_\_\_\_\_

Affirmed before me this 26th day  
of May, 20 26.

  
 \_\_\_\_\_  
 A Commissioner for taking Affidavits  
 within British Columbia



NO: ABB-S-S-07078  
ABBOTSFORD REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

Kirstin Chase Olsen

(the Petitioner)

AND:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

(the Respondents)

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***Charter Submissions of the Petitioner***

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**Lawyer for the Petition**

RDM Lawyers LLP

6000 15th Street

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Email:

**Tabitha Ewert**  
Lawyer for the Petitioner

**Application Date and  
Time:  
Place of Application:  
Time Estimate:  
Submitted by:**

**Assize week of April 7, 2026  
10:00 am  
Abbotsford Supreme Court  
2 days  
RDM Lawyers LLP**

## A. Standard of Review and Burden of Proof

1. In *York Region*, the Supreme Court of Canada held that the correctness standard applies to the questions of: 1) whether the *Charter* applies<sup>1</sup>; and 2) whether a *Charter* right arises, the scope of its protection and the appropriate framework of analysis.<sup>2</sup>
2. If Tribunal's Decision did infringe Ms. Olsen's freedom of expression, the Tribunal has the burden to "demonstrate that they have given due regard to the importance of the expressive rights at issue".<sup>3</sup>
3. If the Tribunal did engage in balancing of the *Charter* protection against the applicable statutory objective, the standard of review for that question is reasonableness.<sup>4</sup>

## B. Ms. Olsen's *Charter* Freedom of Expression was engaged by the Tribunal Decision

1. It cannot be seriously disputed that the Tribunal Decision against Ms. Olsen engaged her *Charter* freedom of expression. The Tribunal described the "nature of the discrimination" as follows:

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.<sup>5</sup>

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<sup>1</sup> *York Region District School Board v Elementary Teachers' Federation of Ontario*, 2024 SCC 22 [*York Region*] at para 62.

<sup>2</sup> *York Region* at para 63.

<sup>3</sup> See *Doré v. Barreau du Québec*, 2012 SCC 12 [*Doré*] at para 66 ("Disciplinary bodies must therefore demonstrate that they have given due regard to the importance of the expressive rights at issue, both in light of an individual lawyer's right to expression and the public's interest in open discussion."); *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 at para 38 ("The Charter enumerates a series of guarantees that can only be limited if the government can justify those limitations as proportionate."); *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 [*LSBC v TWU*] at para 80 (quoting *Loyola* at para 38); *UAlberta Pro-Life v Governors of the University of Alberta*, 2020 ABCA 1 at paras 159, 162 ("Furthermore, and of key importance, the onus on proving the 'section 1 limit' on expression freedom even under administrative law should be on the state agent as it is the exercise of power by an emanate of the state."), 166, 169, 184, 215, 230; *McCarthy v. Whitefish Lake First Nation #128*, 2023 FC 220 at para 86; *Lethbridge and District Pro-Life Association v Lethbridge (City)*, 2020 ABQB 654 [*Lethbridge*] at para 89; *Baars v. Children's Aid Society of Hamilton*, 2018 ONSC 1487 at para 122 [Baars]; *Canadian Centre for Bio-Ethical Reform v City of Peterborough*, 2016 ONSC 1972 at para 15.

<sup>4</sup> *Sikora v Deputy Director Community Safety Unit*, 2025 BCSC 57 at para 59.

<sup>5</sup> *Wiebe v. Olsen*, 2025 BCHRT 14 [Tribunal Decision] at para 169.

2. The Supreme Court of Canada has provided the following test to determine whether an expressive activity is protected by the *Charter*:

In sum, to determine whether an expressive activity is protected by the *Charter*, we must answer three questions: (1) Does the activity in question have expressive content, thereby bringing it, *prima facie*, within the scope of s. 2(b) protection? (2) Is the activity excluded from that protection as a result of either the location or the method of expression? (3) If the activity is protected, does an infringement of the protected right result from either the purpose or the effect of the government action?<sup>6</sup>

3. Ms. Olsen's response to Terry Wiebe's question has expressive content. Even silence is a form expression protected by the *Charter*.<sup>7</sup>

4. In this case, the Tribunal mostly targeted Ms. Olsen's silence, in effect punishing Ms. Olsen for failing to provide a positive response in the context of a particular conversation. The freedom of compelled speech has long been recognized as an important part of section 2(b).<sup>8</sup>

5. Nothing in the location or method of Ms. Olsen's private conversations with her friend could exclude it from *Charter* protection.

6. The Tribunal clearly intended to target Ms. Olsen's response to Terry Weibe in its Decision, labelling it discrimination.

7. Further, The Tribunal's Decision indubitably infringed Ms. Olsen's freedom of expression by imposing a \$10,000 fine against her for her expressive conduct.

### **C. The Tribunal's duty to consider and proportionately balance freedom of expression**

8. Justice Côté, writing for a unanimous Court in *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, gave a

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<sup>6</sup> *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2 at para 38.

<sup>7</sup> *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at p. 1080.

<sup>8</sup> *National Bank of Canada v. Retail Clerks' International Union et al.*, 1984 CanLII 2 (SCC), [1984] 1 SCR 269, 296.

comprehensive description of government decision makers' duty to consider *Charter* rights and values engaged by their decisions.<sup>9</sup>

9. The first step for the Court is to determine whether the administrative decision at issue engages the *Charter* by limiting a *Charter* right or value.<sup>10</sup>

10. The second step is to determine whether the decision maker considered the relevant *Charter* values: "An administrative decision maker must consider the *relevant* values embodied in the *Charter*, which act as constraints on the exercise of the powers delegated to the decision maker".<sup>11</sup>

11. The third step is to determine "whether the exercise of discretion reflects a "proportionate balancing" of *Charter* rights and the values underlying them, on the one hand, with the statutory objectives in respect of which the discretion was granted, on the other".<sup>12</sup>

12. In this case, the focus will be on the second step: whether the Tribunal actually considered Ms. Olsen's freedom of expression.

13. Justice Côté was clear on the importance of this consideration: "To be reasonable, a decision must reflect the fact that the decision maker considered the *Charter* values that were relevant to the exercise of its discretion".<sup>13</sup> This consideration cannot be mere lip service,<sup>14</sup> but must be meaningful: "The decision must also show that the decision maker 'meaningfully' (*Vavilov*, at para. 128) addressed the *Charter* protections to 'reflect' the impact that its decision may have on the concerned group or individual (para. 133)".<sup>15</sup>

14. Justice Rowe, writing for the majority in *York Region District School Board v. Elementary Teachers' Federation of Ontario*,<sup>16</sup> applied these principles to the decision of an arbitrator which had failed to recognize that the section 8 *Charter* right to be free from unreasonable search and seizure applied to protect the interests of the teachers before her. Justice Rowe held that "when

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<sup>9</sup> See *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 [*Commission scolaire*] at paras 60-73.

<sup>10</sup> *Commission scolaire* at para 61.

<sup>11</sup> *Commission scolaire* at para 66.

<sup>12</sup> *Commission scolaire* at para 67.

<sup>13</sup> *Commission scolaire* at para 68.

<sup>14</sup> *Lethbridge* at paras. 108-109, 112; *Guelph and Area Right to Life v. City of Guelph*, 2022 ONSC 43 at paras. 61, 87.

<sup>15</sup> *Commission Scolaire* at para 68.

<sup>16</sup> *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 [*York Region*].

a *Charter* right applies, there must be clear acknowledgment of and analysis of that right.”<sup>17</sup> The failure of the arbitrator to do so was a “fatal” error.<sup>18</sup>

15. Likewise, the Tribunal committed a fatal error by failing to recognize that Ms. Olsen’s *Charter* section 2(b) freedom of expression applied. Nowhere in their Decision does the Tribunal acknowledge, let alone attempt to proportionately balance, Ms. Olsen’s *Charter* freedom of expression.

16. The Tribunal’s response is that Ms. Olsen – who was self-represented before the Tribunal – did not rely on the *Charter* and implies therefore that this Court should refuse to consider the *Charter* issue.<sup>19</sup>

17. This response does not excuse a government decision maker – in this case composed of a panel of lawyers<sup>20</sup> – from their failure to recognize that both the determination by a government tribunal of whether comments violate a statute and the determination of how much of a financial penalty to impose for such comments, engages the *Charter* freedom of expression.

18. It is not necessary for parties, self-represented, layperson or otherwise, to ask government decision makers to consider *Charter* rights engaged by their decisions: they are constitutionally obligated to.<sup>21</sup> Justice Rowe pointed out in *York Region* that “the arbitrator was not asked to consider whether s. 8 of the *Charter* had been infringed”.<sup>22</sup> Yet, the failure of the arbitrator to appreciate that section 8 of the *Charter* was at stake and consider that right was a fatal error.

19. In *Commission scolaire*, Justice Côté explained different ways in which *Charter* rights or values arise for consideration, including “because of the link between the value and the matter under consideration”.<sup>23</sup>

20. As discussed above, the matter under consideration – whether Ms. Olsen’s response to Terry Wiebe was discriminatory and whether it warranted an order from a government decision

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<sup>17</sup> *York Region* at para 94.

<sup>18</sup> See *York Region* at paras 68-69, 94.

<sup>19</sup> Tribunal’s Response to Petition, paras 35, 38, 40.

<sup>20</sup> The Court can take judicial notice of the fact that all the Tribunal Members on the panel – Devyn Cousineau, Robin Dean, and Andrew Robb – are lawyers: <https://www.bchrt.bc.ca/tribunal/organization/members/>.

<sup>21</sup> *Commission Scolaire* at para 65, 77; *LSBC v TWU* at para 41; *Doré* at paras 24, 35;

<sup>22</sup> *York Region* at para 18.

<sup>23</sup> *Commission Scolaire* at para 66.

maker that Ms. Olsen pay \$10,000 – was linked to the *Charter* freedom of expression which was at stake.

21. In a more recent decision, the Tribunal recognized that, despite the respondent's position that "he was not asking the Tribunal to balance his *Charter* rights", "it was incumbent on us to balance his right to free expression in the application of s. 7(1)(a) of the *Code* and we have done so".<sup>24</sup> Likewise, in this case where the Tribunal was determine whether to deem Ms. Olsen's expressive conduct "discrimination" and order a significant financial penalty, "it was incumbent" on the Tribunal to balance Ms. Olsen's right to free expression.

22. The Tribunal however, failed to recognize that Ms. Olsen's *Charter* freedom of expression was engaged by its decision, and utterly failed to clearly acknowledge and analyze that right. In the words of Justice Rowe, this error is fatal.

23. The Decision is unreasonable, because it does not show that the Tribunal considered the *Charter* values that were relevant to the exercise of its discretion.

**D. The Tribunal Decision does not reflect a proportionate balance of Ms. Olsen's *Charter* freedom of expression with the *Code's* statutory objectives.**

24. Even if the Tribunal had recognized that Ms. Olsen's *Charter* freedom of expression was engaged by its decision and attempted to balance that right with the purposes of the *Code*, the Tribunal Decision, in finding Ms. Olsen's expression to be discrimination and in imposing a \$10,000 penalty for that expression, does not reflect a proportionate balance.

25. The Supreme Court of Canada's decision in *LSBC v TWU* sets out the relevant considerations for determining whether a decision is proportionate in limiting *Charter* protections.<sup>25</sup>

*i. The Code's purposes*

26. Section 3 of the *Human Rights Code* particularizes the legislation's "purposes":

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<sup>24</sup> See *Chilliwack Teachers' Association v. Neufeld (No. 10)*, 2026 BCHRT 49 at para 21. It must be noted however, that the Tribunal failed entirely to acknowledge that the *Charter* was engaged in its determination of whether Neufeld's public comments amounted to discrimination under section 13. Counsel understands that this decision is being challenged on judicial review.

<sup>25</sup> *LSBC v TWU* at paras 80-82.

The purposes of this Code are as follows:

- (a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- (b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- (c) to prevent discrimination prohibited by this Code;
- (d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;
- (e) to provide a means of redress for those persons who are discriminated against contrary to this Code.<sup>26</sup>

27. Section 10 of the *Human Rights Code* protects tenants from discrimination in the landlord-tenant context. The section's specific purpose is self-evidently to ensure equal treatment and substantive equality in housing. It does this by preventing tangible adverse treatment (e.g., eviction, rent increases, or material interference with quiet enjoyment).

28. These objectives are important but must be advanced in a manner that is proportionate to, and minimally impairing of, *Charter* rights.<sup>27</sup>

*ii. Tribunal's determination of adverse impact*

29. The Tribunal relied on two earlier Tribunal decisions (neither of which considered the *Charter*) that listed factors for determining whether "negative comments" could constitute an adverse impact under the *Code*.<sup>28</sup>

30. Relying on older precedents to deem expression discrimination is not acceptable given the Supreme Court of Canada's binding pronouncement in 2021 that "[a] discrimination claim must be limited to expression whose effects are truly discriminatory."<sup>29</sup> In *Ward*, the Court was concerned with a tribunal decisions which "dispenses with any fair balancing of freedom of expression and protection of the right to the safeguard of dignity" but rather created "a second

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<sup>26</sup> *Human Rights Code*, RSBC 1996, c 210 at s. 3.

<sup>27</sup> *Dore* at paras. 35-58; *Loyola* at para. 39

<sup>28</sup> Decision at para 132, citing *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.

<sup>29</sup> *Ward* at para 30.

avenue of recourse for discrimination, parallel to an action in defamation, to compel a person to answer for the harm caused by their words”.<sup>30</sup>

31. In particular, the Court in *Ward*, held that the tribunal and the lower courts had “erred in excluding *Whatcott* from their reasoning”.<sup>31</sup> Relying on *Whatcott*, the Court warned against “censoring expression because of its content or its impact on a person, regardless of its discriminatory effects.”<sup>32</sup>

32. The Court in *Ward* also provided relevant observations about “expression that occurs in private”, emphasizing against that “the analysis must be focused on the likely discriminatory effects of the expression, not on the emotional harm suffered by the person alleging discrimination.”<sup>33</sup>

33. The Court in *Ward* set out a *Charter*-informed test for whether the expression at issue could be found discriminatory:

It must first be asked whether a reasonable person, aware of the relevant context and circumstances, would view the expression targeting Mr. Gabriel as inciting others to vilify him or to detest his humanity on the basis of a prohibited ground of discrimination. It must then be asked whether this reasonable person would view the expression, considered in its context, as likely to lead to discriminatory treatment of Mr. Gabriel. In our opinion, the comments made by Mr. Ward meet neither of these two requirements.<sup>34</sup>

34. While the Court in *Ward* noted that “Mr. Gabriel’s testimony spoke volumes about the pain caused to him by those hurtful words, which date back to a time when he was still a young teenager”, the “legal framework is focused on the likely discriminatory effects of the comments, not on the emotional harm suffered by the person targeted.”<sup>35</sup>

35. A recent case from the Nova Scotia Supreme Court applied *Ward* to a decision of the *Nova Scotia Human Rights Commission* accepted a discrimination complaint based on a professor’s public expression criticizing his university’s approach to indigenous issues and students.<sup>36</sup> An

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<sup>30</sup> *Ward* at para 29.

<sup>31</sup> *Ward* at para 71.

<sup>32</sup> *Ward* at para 82.

<sup>33</sup> *Ward* at para 86.

<sup>34</sup> *Ward* at para 104.

<sup>35</sup> *Ward* at para 107.

<sup>36</sup> *Saint Mary’s University v. Nova Scotia Human Rights Commission*, 2025 NSSC 107 [*Saint Mary’s*].

indigenous student whose specific experiences had been described by the professor had filed the complaint, alleging discrimination in access to services based on ethnic, national or aboriginal origin.<sup>37</sup> The ground of discriminatory publication was added later.<sup>38</sup>

36. The complainant alleged significant personal affects.<sup>39</sup>

37. Similar to the present case, the human rights decision maker had failed to consider freedom of expression.<sup>40</sup> This was found to be a “significant and substantive flaw”: “the Commission could not have addressed this Complaint without at least considering the fundamental issue of freedom of expression.”<sup>41</sup>

38. Relying on *Ward*, Justice Boudreau found that “being upset or offended is not the same as discrimination.”<sup>42</sup> The decision to accept the complaint was found unreasonable and quashed.<sup>43</sup>

39. In the present case, the Tribunal’s conclusion on discrimination similarly shows an improper focus on the subjective effect on the complaint, while failing to respect the constitutionally-mandated distinction that being upset is not the same as discrimination.<sup>44</sup>

40. The Tribunal’s own findings show that underlying purposes for freedom of expression were engaged. In regard to her friend getting a double mastectomy, Ms. Olsen was afraid for her friend, given the negative experience of her own mother’s mastectomy.<sup>45</sup> Being able to express one’s view of the truth about mastectomy, and communicate one’s fear for another’s well-being engage core principles of truth seeking and self-fulfillment underlying *Charter* free expression.<sup>46</sup> Yet, despite the fact that the Tribunal acknowledged that “there was at least some non-discriminatory basis for Ms. Olsen’s discomfort with top surgery”,<sup>47</sup> her response was deemed prohibited discrimination under the *Code*.

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<sup>37</sup> *Saint Mary’s* at paras 6, 10

<sup>38</sup> *Saint Mary’s* at para 19.

<sup>39</sup> *Saint Mary’s* para 11.

<sup>40</sup> See *Saint Mary’s* at paras 72-73.

<sup>41</sup> *Saint Mary’s* at paras 75, 79.

<sup>42</sup> *Saint Mary’s* at para 80.

<sup>43</sup> *Saint Mary’s* at para 88.

<sup>44</sup> See *Tribunal Decision* at paras 143-144.

<sup>45</sup> *Decision* at paras 140.

<sup>46</sup> *Irwin Toy Ltd. v. Quebec*, [1989] 1 SCR 927 at 976-977.

<sup>47</sup> *Decision* at para 140.

41. In terms of advancing the purposes of the *Code*, it should be noted: These were not public statements. There is no suggestion Ms. Olsen's comments incited others to vilify or detest Terry Wiebe's humanity. They were not conditions of tenancy. They were not the cause of any change in rent, eviction notice, or other tangible detriment. They occurred between people who had been close friends. The Tribunal itself accepted that the eviction was for wholly non-discriminatory reasons unrelated to gender identity.

42. In light of *Whatcott* and *Ward*, it cannot be said that the Tribunal's decision deeming Ms. Olsen's comments to Terry Wiebe prohibited discrimination<sup>48</sup> affects the freedom of expression as little as reasonably possible and gives effect, as fully as possible to that freedom given the particular statutory mandate.<sup>49</sup> Therefore, that decision is not proportionate.

*iii. The Tribunal's \$10,000 award*

43. Likewise, the Decision to impose a \$10,000 penalty on Ms. Olsen for "injury to dignity" of Terry Wiebe is an unreasonable and disproportionate limit on her *Charter* freedom of expression. While upholding human dignity is undoubtedly an important statutory objective (as well as an underlying value the *Charter*<sup>50</sup>), it applies to both Terry Wiebe and Ms. Olsen. As the Court held in *Ward*, "freedom of expression flows from the concept of human dignity".<sup>51</sup> When a government tribunal imposes a public \$10,000 penalty against an individual because of their comment of concern, and failing to provide compelled assurance, it cannot be doubted that such action undermines that individual's dignity. Yet, the Tribunal failed entirely to take such *Charter*-informed considerations into account, and focused entirely on the subject impact it viewed the expression had on Terry Wiebe<sup>52</sup> despite the fact that government limits on expression cannot constitutionally have such a narrow focus. Further, in regard to a financial penalty on expression, there was clearly an option open to the Tribunal that would have reduced the impact on Ms. Olsen's freedom of expression while still sufficiently further the relevant statutory objectives: a significantly reduced fine (Ms. Olsen maintains no award against her was warranted).

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<sup>48</sup> See also *Decision* at para 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*."

<sup>49</sup> See *LSBC v TWU* at para 80.

<sup>50</sup> *Ward* at para 48.

<sup>51</sup> *Ward* at para 59.

<sup>52</sup> *Ward* at para 191.

44. The Tribunal found no tangible impact on Terry Wiebe's living situation, but chose instead to police the private conversation between two individuals with past friendship and a longstanding relationship. The negative impacts of the Tribunal's decision are profound.

45. The deleterious effects are profound. The Decision penalizes expression of beliefs that are sincerely held, rooted in one's life experience (family history of breast cancer, former nursing background, feminist upbringing), and part of legitimate public debate about medical transition. The purported adverse effect rests entirely on the private, conversational response to Wiebe's question about whether the tenancy would remain secure if they obtained top surgery.

46. Finally, the Decision chills honest conversation between a host of societally connected persons (landlord/tenant, hairdresser/customer, supervisor/sales association, etc) on a plethora of personal or political issues.

**From:**  
**To:**  
**Cc:**  
**Subject:** RE: Olsen v. British Columbia Human Rights Tribunal et al. BCSC Action No.: ABB-S-S-07078  
**Date:** Friday, April 24, 2026 4:00:28 PM  
**Attachments:** [image002.png](#)  
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Good Afternoon,

Please find attached the Respondent's draft written submissions.

Kindly note that these are draft submission regarding the *Charter* arguments and we reserve the right to amend or supplement them as necessary.

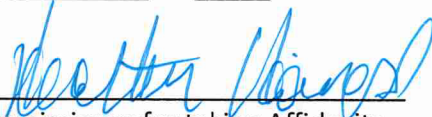
Kind regards,

TERRITORIES: CLAS is located on unceded Coast Salish territory, including the lands belonging to the x̱məθḵəy̱əm (Musqueam), Skwxwú7mesh (Squamish) and selilwetaʔ / Selilwitulh (Tsleil-Waututh) Nations.

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This is Exhibit "D" referred to in the Affidavit #1 of \_\_\_\_\_

Affirmed before me this 26th day of May, 2026.

  
 \_\_\_\_\_  
 A Commissioner for taking Affidavits  
 within British Columbia

No. ABB-S-S-07078  
Abbotsford Registry

*In the Supreme Court of British Columbia*  
In the Matter of the *Judicial Review Procedure Act* R.S.B.C. 1996, c. 241

Between:

**Kirstin Chase Olsen**

Petitioner

And:

**British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe**

Respondents

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**CHARTER SUBMISSIONS OF THERESA (TERRY) WIEBE**

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**Counsel for the Respondent, Theresa  
(Terry) Wiebe**

**Application Date: Assize week of June 1, 2026  
Place of Application: Abbotsford Supreme Court  
Time: 10:00 am**

### Standard of Review

1. If this Court decides that the *Charter* argument is reviewable, then the standard is reasonableness.<sup>1</sup> *Vavilov* provided a distinction between the standard of review that applies when there is a constitutional challenge to an enabling statute and when a decision-maker has had to proportionately balance *Charter* protections.<sup>2</sup> The standard of review of correctness applies to the former while allegations that an administrative decision has unjustifiably limited a *Charter* right is reviewable on the deferential standard of reasonableness.<sup>3</sup>
2. The BC Court of Appeal recently addressed the implications of *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 (“*York Region*”)<sup>4</sup>:

It is difficult to assess the full implications of *York Region* for the standard of review analysis under the *Doré/Loyola* framework, particularly because the majority did not expressly purport to overrule or modify the established framework. At the very least, *York Region* seems to suggest that different standards of review may apply to the two stages of the analysis: (1) correctness to the preliminary question identified in *Loyola* as to whether the *Charter* applies (which would include the scope of the *Charter* protection and the appropriate framework of analysis), and (2) reasonableness to the proportionate

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<sup>1</sup> *Vabuolas v. British Columbia (Information and Privacy Commissioner)*, 2025 BCCA 83 (“*Vabuolas*”) at para. 72.

<sup>2</sup> at para 57.

<sup>3</sup> *Vavilov* at para. 57.

<sup>4</sup> *Vabuolas* at para. 96.

balancing that occurs at the second stage.

*Freedom of Expression under s. 2(b) of the Charter*

3. The Petition is an attempt to re-argue the case and go beyond the scope of the issues that were put before the Tribunal.
4. It is well-established in the jurisprudence that a judicial review is not the appropriate mechanism to introduce new issues because it is not a re-hearing.<sup>5</sup>
5. Ms. Olsen was at liberty to raise *Charter* values before the Tribunal and did not do so. Ms. Olsen has not demonstrated any of the exceptional circumstances in which new issues may be considered at judicial review.
6. In *Conklin v. University of British Columbia*, the Court of Appeal noted that “the reviewing court must be sensitive to the fact that a tribunal’s decision and reasoning process will be informed by and responsive to the arguments before it” and that “it is generally considered that a judge should not find a decision to be patently unreasonable based on a submission the Tribunal never heard”.<sup>6</sup>
7. Recently, the Tribunal discussed freedom of expression in *Chilliwack Teachers’ Association v. Neufeld (No. 10)*, 2026 BCHRT 49 (“*Neufeld*”). In that case, the respondent had advanced arguments and addressed freedom of expression in their submissions.<sup>7</sup> The respondent also “occasionally alluded to his religion, [but] at no point in this complaint did he assert, or lead evidence to support, that his right to freedom of religion under s. 2(a) of the *Charter* was engaged.”<sup>8</sup> The Tribunal did not consider whether their decision appropriately balanced the respondent’s religious freedom on the basis that “it would not

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<sup>5</sup> *Vavilov* at para. 83.

<sup>6</sup> 2022 BCCA 333 at para. 29.

<sup>7</sup> *Neufeld* at para. 21.

<sup>8</sup> *Neufeld* at para. 22.

be appropriate to speculate about s. 2(a) of the *Charter* without a factual foundation or proper argument.”<sup>9</sup>

8. Similarly, Ms. Olsen did not at any point before the Tribunal assert or lead evidence to support that her rights under s. 2(b) of the *Charter* was engaged. Ms. Olsen is now alleging that the Tribunal erred by failing to consider s. 2(b) *Charter* right to freedom of expression against the *Code*'s statutory objective but the Tribunal cannot be faulted for failing to analyze arguments that were never put before it. To consider Ms. Olsen's s. 2(b) rights, the Tribunal would have been forced to speculate because she did not provide any factual foundation, argument, or evidence.
9. Ms. Olsen has relied on *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 (“*Commission scolaire*”), *York Region*, and *Saint Mary's University v. Nova Scotia Human Rights Commission*, 2025 NSSC 107 (“*Saint Mary's University*”) to argue that the Tribunal had a duty to consider and proportionately balance her freedom of expression. The present case is distinguishable from *Commission scolaire*, *York Region*, and *Saint Mary's University*.
10. *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 (“*Commission scolaire*”) was about a discretionary decision to refuse admission of non-rights holder parents' children to minority language schools.<sup>10</sup> The s. 23 *Charter* value was clearly engaged and before the Minister. The Minister took s. 23 into account but erroneously opted to prioritize scarce government resources instead. The Minister acknowledged in some of the decisions she

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<sup>9</sup> *Neufeld* at para. 22.

<sup>10</sup> at para. 5.

made that she had to consider the purpose of s. 23, particularly its unique remedial nature, in exercising her discretion.<sup>11</sup>

11. By contrast, the Court found it was neither necessary nor appropriate to decide whether the appellants' right to use French before the Court of Appeal for the Northwest Territories or the right to be heard was infringed because the appellants raised a new ground of appeal under s. 19(1) of the *Charter* and s. 9(1) of the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1 (the "*OLA*").<sup>12</sup> The SCC found that the appellants did not raise s. 19(1) of the *Charter* or s. 9(1) of the *OLA* arguments at the Court of Appeal for the Northwest Territories.<sup>13</sup> While *Commission scolaire* is otherwise distinguishable from the case at bar, they are alike in that in both a party attempted to raise a argument for the first time at the review stage. This Court should decline to entertain Ms. Olsen's s. 2(b) *Charter* argument, as it was not raised before the Tribunal and is advanced for the first time on judicial review, contrary to the principles of procedural fairness and the proper role of a reviewing court.

12. *York Region* does not stand for the proposition that any failure to consider *Charter* values is a fatal error. The duty arises only where a *Charter* right is clearly implicated. In *York Region*, s. 8 of the *Charter* was implicated. While the parties had not sought *Charter* remedies, they had argued s. 8 *Charter* jurisprudence.<sup>14</sup> The arbitrator considered whether there was a reasonable expectation of privacy and s. 8 *Charter* principles and

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<sup>11</sup> *Commission scolaire* at para. 78.

<sup>12</sup> *Commission scolaire* at para. 104.

<sup>13</sup> *Commission* at para. 109.

<sup>14</sup> *York Region* at paras. 109 & 117.

jurisprudence<sup>15</sup> but misunderstood the nature of the s. 8 right.<sup>16</sup> In this case, *Charter* issues were never raised before the Tribunal, nor was any such issue apparent on the record.

13. In *Saint Mary's University*, one of the respondents raised freedom of expression and argued that the complaint should be dismissed on the basis that it interfered with the free expression of opinion.<sup>17</sup> Although that argument was before the decision-maker, it was not addressed.<sup>18</sup> In the present case, freedom of expression was never raised before the Tribunal and Ms. Olsen now seeks to advance it for the first time on judicial review.

14. The Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association* 2011 SCC 61 ("*Alberta Teachers' Association*") confirmed that parties do not have the right to require reviewing courts to consider issues not previously raised.<sup>19</sup> Courts have the discretion to not consider an issue that was raised for the first time at judicial review.<sup>20</sup> The SCC stated that this discretion should not be exercised in favour of an applicant on judicial review where the issue could have been but was not raised before the tribunal.<sup>21</sup> The SCC cautioned:

raising an issue for the first time on judicial review may unfairly prejudice the opposing party and may deny the court the adequate evidentiary record required to consider the issue.<sup>22</sup>

Care must be taken not to give parties an opportunity for a second hearing before a tribunal as a result of their failure to raise at the first hearing all of

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<sup>15</sup> *York Region* at paras. 18 & 117.

<sup>16</sup> *York Region* at paras. 3.

<sup>17</sup> at paras. 42 & 72.

<sup>18</sup> *Saint Mary's University* at para. 72.

<sup>19</sup> at para. 22.

<sup>20</sup> *Alberta Teachers' Association* at para. 22.

<sup>21</sup> *Alberta Teachers' Association* at para. 23.

<sup>22</sup> *Alberta Teachers' Association* at para. 26.

the issues they ought to have raised.<sup>23</sup>

15. In this case, considering the s. 2(b) *Charter* argument for the first time at judicial review will be prejudicial to Terry Wiebe and the Tribunal as they did not get a chance to hear and consider the argument and there is no adequate evidentiary record to consider the issue.
16. In the alternative, the Supreme Court of Canada has recognized that administrative decision-makers, when exercising discretionary powers under their enabling statutes, are typically well-positioned to balance *Charter* protections with the statutory objectives at issue.<sup>24</sup> They are generally best suited to assess how these competing considerations should be weighed in light of the facts.<sup>25</sup> As a result, reviewing courts should show deference when evaluating whether the decision achieves a proportionate balance. The Court also recognizes that there may be multiple reasonable ways to strike this balance between *Charter* protections and statutory objectives.<sup>26</sup> A decision will be considered reasonable so long as it “falls within a range of possible, acceptable outcomes.”<sup>27</sup>
17. In this case, the Tribunal did interpret and apply the statutory objectives of the *Code* in a manner that is consistent and balanced with the *Charter*. Ms. Olsen’s right to freedom of expression under s. 2(b) of the *Charter* is not absolute. The freedom of expression has limits, particularly when the expression causes harm or undermines the rights and dignity of vulnerable groups, such as transgender individuals.

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<sup>23</sup> *Alberta Teachers’ Association* at para. 55.

<sup>24</sup> *Doré v. Barreau du Québec* 2012 SCC 12 (“*Doré*”) at para. 54; *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 (“*Loyola*”) at para. 42.

<sup>25</sup> *Doré* at para. 54.

<sup>26</sup> *Loyola* at para. 41.

<sup>27</sup> *Doré* at para. 56.

18. The Tribunal carefully considered Ms. Olsen’s statements about Terry Wiebe changing their gender. The Tribunal acknowledged that certain comments—such as referring to top surgery as “mutilation” and suggesting that Terry Wiebe was “fine as a lesbian”— could be characterized as anti-trans and transphobic.<sup>28</sup> However, the Tribunal concluded that these statements did not, in themselves, constitute discrimination under the *Code*. In doing so, the Tribunal exercised appropriate restraint, ensuring that the statutory prohibition against discrimination was not applied in a manner that unduly limits expressive freedom. This reflects a proportionate application of the Tribunal’s mandate, consistent with the principles underlying the Doré/Loyola framework.
19. Contrary to Ms. Olsen’s submission, this is not a case in which the Tribunal failed to consider freedom of expression; rather, it demonstrates that the Tribunal balanced expressive interests against the *Code*’s objectives and drew a principled line between offensive expression and discriminatory conduct.

### ***Disproportionate Damages***

20. Ms. Olsen alleges that the Tribunal erred in determining the damages to dignity in the amount of \$10,000. Ms. Olsen argues that such a penalty is disproportionate and does not balance the fulfillment of the statutory purpose of the *Code* against her s. 2(b) *Charter* right.
21. The amount awarded for injury to dignity, feelings, and self-respect is a discretionary matter, subject to the patent unreasonableness standard established for discretionary matters by the *ATA* s. 59(3) and (4).

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<sup>28</sup> Decision at paras. 118, 121 & 147.

22. The Court of Appeal in *University of British Columbia v. Kelly*, 2016 BCCA 271 (“*Kelly*”) overturned the chambers judge’s finding that an award for injury to dignity by the Tribunal was patently unreasonable.<sup>29</sup> In *Kelly*, the Tribunal made an award for injury to dignity that was twice as large as any previous award under this category.<sup>30</sup> In overturning the chambers judge the court of appeal made clear that a judicial review of these awards is not a quantum of damages appeal and the previous range of awards plays a diminished role.<sup>31</sup> The Court of Appeal reiterated that on judicial review courts must not reweigh the evidence before the Tribunal or second guess the Tribunal’s exercise of discretion.<sup>32</sup>
23. The focus of an award for injury to dignity is the impact of the discrimination on the complainant. In this case, the Tribunal found that Ms. Olsen discriminated against Terry Wiebe when she repeatedly refused to reassure them that their tenancy would be safe if they proceeded with surgery. This sent a message to Terry Wiebe that they could lose their home if they took further steps to change their gender.<sup>33</sup> In this context, Terry Wiebe was vulnerable to discrimination in two intersecting ways: 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 marginalize and discriminate against transgender people.<sup>34</sup> This discrimination had a profound impact on Terry Wiebe where they felt unsafe in their home, fearful that Ms. Olsen would end their tenancy, and stopped hormone treatment.<sup>35</sup> Further, the discrimination had an enduring impact on Terry Wiebe.<sup>36</sup>

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<sup>29</sup> at para. 64.

<sup>30</sup> at para. 59.

<sup>31</sup> *Kelly* at para. 60.

<sup>32</sup> *Kelly* at para. 62.

<sup>33</sup> Decision at para. 170.

<sup>34</sup> Decision at paras. 171 & 174.

<sup>35</sup> Decision at paras. 176-178 & 183.

<sup>36</sup> Decision at para. 179.

24. The purpose of the award is to provide redress for the harm that has been done through the discrimination. This is an inherently imperfect process. The Tribunal considered the impact and social context of the discrimination in this case and relied on its expertise and discretion to find that the award should be \$10,000. There was evidence on which to base this exercise of discretion and the Court should not interfere with it.
25. Ms. Olsen has not demonstrated that the Tribunal interpreted and applied the statutory objectives of the *Code* in a manner that is inconsistent and unbalanced with the *Charter*, let alone demonstrated the patent unreasonableness required to meet the high standard of review for a discretionary decision of the Tribunal.
26. In the alternative, if this Court applies the *Doré/Loyola* framework, the damages to dignity in the amount of \$10,000 is owed deference because it falls within a range of reasonable outcomes.
-

**From:**  
**To:**  
**Cc:**  
**Subject:** Olsen v. British Columbia Human Rights Tribunal et al. BCSC Action No.: ABB-S-S-07078  
**Date:** Friday, May 22, 2026 4:13:59 PM  
**Attachments:** [image001.png](#)  
[Draft Written Submissions.pdf](#)

**EXTERNAL** This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Good afternoon,

Please find attached the draft written submissions for your review.

Please be advised that we do not expect substantive changes to the attached or to the Charter submissions that were previously provided to you. However, final versions will be provided closer to the hearing date.

Kind regards,



*The information contained in this email may be subject to lawyer and client confidentiality, and is intended strictly for the use of the above named intended receiver. If you are not the intended receiver, or an agent or employee responsible to deliver it to the intended receiver, we hereby notify you that any dissemination, distribution or copying of this email is prohibited, and ask that you immediately and permanently delete it. If you have received this communication in error, please notify us by telephone or return email immediately. Thank you.*

This is Exhibit "E" referred to in the  
Affidavit #1 of \_\_\_\_\_ :

Affirmed before me this 26th day  
of May, 2026.

  
\_\_\_\_\_  
A Commissioner for taking Affidavits  
within British Columbia

## **I. Time limit for judicial review**

1. This Petition was originally filed on March 21, 2025. It was rejected by the registry and resubmitted on March 25, 2025 with no substantial change. [1st Affidavit of Marta Burghardt dated March 30, 2026].
2. This Petition was filed one day after the 60 days limit in the Administrative Tribunals Act.
3. All parties consent to the late filing of this Petition.
4. Administrative Tribunals Act [SBC 2004] CHAPTER 45 says the following.

**57** (1)Unless this Act or the tribunal's enabling Act provides otherwise, an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.

(2)Despite subsection (1), either before or after expiration of the time, the court may extend the time for making the application on terms the court considers proper, if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.

## **II. Overview of Facts**

5. Petition paragraphs 5-14.

## **III. Standard of Review – Legislation**

6. Administrative Tribunals Act [SBC 2004] CHAPTER 45

### **Standard of review without privative clause**

**59** (1)In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2)A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3)A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4)For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

(a)is exercised arbitrarily or in bad faith,

(b)is exercised for an improper purpose,

(c)is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

7. Human Rights Code [RSBC 1996] CHAPTER 210

**Application of Administrative Tribunals Act to tribunal**

32 The following provisions of the *Administrative Tribunals Act* apply to the tribunal:

(p) section 57 [time limit for judicial review];

(q) section 59 [standard of review without privative clause];

**IV. Standard of Review – Case Law**

8. The key question is whether the errors alleged are errors of fact or errors of mixed fact and law. It is the Petitioner's understanding that all parties agree to what standard applies to both categories but may disagree on which category apply.

9. *Lavender Co-Operative Housing Association v. Ford*, 2009 BCSC 1437 affirmed by *Lavender Co-Operative Housing Association v. Ford*, 2011 BCCA 114.

10. In this case, the alleged error was whether the respondent's one-member policy amounted to discrimination based on marital status.

[38] Madam Justice Levine, for the Court, found that there was nothing in the wording of s. 59 to indicate that the Legislature intended that questions of mixed fact and law be treated as findings of fact for the purposes of determining the standard of review, writing as follows, at para.119:

[119] I am sympathetic to the Tribunal's arguments that the courts are not as well-suited as the Tribunal to make decisions about whether discrimination has been established, and that some deference has traditionally been found to be appropriate, despite the absence of a privative clause. The Tribunal was presumably established to make such decisions. Nonetheless, I cannot find in the words or the context of the Act any indication that the Legislature intended that questions of mixed fact and law be treated as "findings of fact" or excluded from the general rule of s. 59(1).

11. In conclusion, Justice Gray found:

[72] The standard of review for questions of mixed fact and law on judicial review of a decision of the BCHRT is correctness, pursuant to s. 59 of the ATA.

12. *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 says the following:

[48] In the case before us, there are two separate issues to be addressed. First, there is the question of the correct test for the establishment of a prima facie case of

discrimination. The identification of the correct test is an issue of law, and the appropriate standard of review is correctness under s. 59(1) of the *Administrative Tribunals Act*.

[49] The question of whether facts have been established that meet the identified legal test, however, involves extricable issues of fact. The appropriate standard of review is that set out in s. 59(2). The Tribunal is entitled to deference on that issue. [emphasis added]

13. Nanaimo (City of) v Mema, 2025 BCSC 863

[21] The City claims that the Tribunal committed an error of law or mixed fact and law by, amongst other things, misapplying the legal test for drawing an inference of discrimination. The “catch-all” provision under s. 59(1) of the ATA captures error of law with the result that the standard of correctness applies.

[22] Questions of mixed fact and law involve applying a legal standard to a set of facts. These issues are also subject to the same provision of s. 59(1) of the ATA and therefore subject to the correctness standard: see *J.J. v. School District 43 (Coquitlam)*, 2013 BCCA 67 at para. 28; *Lavender Co-Operative Housing Assn. v. Ford*, 2011 BCCA 114 at para. 58.

[23] Although the standard of review is correctness, the Court of Appeal cautioned against too-readily finding that an issue is a matter of mixed fact and law; noting: “if there is an extricable issue of fact involved in the “mixed” question, the court must defer to the tribunal in respect of that issue in accordance with s. 59(2) of the *Administrative Tribunals Act*”: see *J.J.* at paras. 28 - 32.

14. As we go through each of the errors, I will address how each one falls under the “mixed fact and law” and are not a matter of “too-readily finding” it as such.

15. To be clear, the Petitioner is not taking issue with any findings of fact made by the Tribunal in this case. It is our argument that the legal tests were either misapprehended or were not applied correctly to the set of facts.

**V. Errors**

16. Petition paragraphs 17-42.

Abbotsford

10-Apr-26

REGISTRY

NO. ABB-S-S-07078  
ABBOTSFORD REGISTRY

## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Kirstin Chase Olsen

(the Petitioner)

AND:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

(the Respondent)

### NOTICE OF HEARING

To: British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

TAKE NOTICE that the petition of Kirstin Chase Olsen dated March 25, 2025, will be heard at the courthouse 32375 Veterans Way, Abbotsford, BC, V2T 0K1 during the assize week of June 1, 2026 at 10:00 am.

This matter is an application for judicial review.

#### 1 Date of hearing

The parties have agreed as to the date of the hearing of the petition.

#### 2 Duration of hearing

It has been agreed by the parties that the hearing will take 2 days.

#### 3 Jurisdiction

This matter is not within the jurisdiction of an associate judge.

**DATE:** April 8, 2026



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Tabitha Ewert  
Lawyer for the Petitioner

13-Apr-26

SUPREME COURT SCHEDULING

No. ABB-S-S-07078  
Abbotsford Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*, R.S.B.C. 1996, c. 241

BETWEEN:

KIRSTEN CHASE OLSEN

PETITIONER

AND:

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL -and- THERESA (TERRY) WIEBE

RESPONDENTS

**REQUISITION – METHOD OF ATTENDANCE**

**Filed by:** the petition respondent, the British Columbia Human Rights Tribunal [**Tribunal**]

Required:

- Order to exempt [*name of party*] from attending the:
  - case planning conference on [*date*] at [*location*] [Rule 5-2(4)]
  - trial management conference on [*date*] at [*location*] [Rule 12-2(6)]
- Order to permit attendance
  - in person or by way of
  - by way of video conference by the Respondent Tribunal at the:
    - hearing of the petition set for the week of June 1, 2026, in chambers (assize)
    - case planning conference on [*date*] at [*location*] [Rule 5-2(4)]
    - trial management conference on [*date*] at [*location*] [Rule 12-2(6)]

telephone by [*name of lawyer or party*] at the:

case planning conference on [*date*] at [*location*] [Rule 5-2(4)]

trial management conference on [*date*] at [*location*] [Rule 12-2(6)]

Order that the following application be heard

in person or by way of

video conference

telephone

other communication medium [*please specify below*]:

*[identify application (including filing date, a brief description of the orders sought, time estimate, date scheduled and location)]* [Rule 23-5 (5)]

Order that the following hearing before a registrar be heard

in person or by way of

video conference

telephone

other communication medium:

*[identify hearing, date scheduled and location]* [Rule 23-5 (5)]

Order that the following application, conference or hearing be heard in person.:

*[identify application (including filing date, a brief description of the orders sought and time estimate) conference or hearing; date scheduled and location]* [Rule 23.1-1 (4)]

This order/relief is sought because:

1. The hearing of this petition for judicial review is currently set for 2 days on the assize list for the week of June 1, 2026, in Abbotsford.
2. Counsel for the respondent Tribunal is in Vancouver.

3. The direction may facilitate the just, speedy and inexpensive determination of this matter by allowing the Tribunal's legal counsel to be on standby and available in the event that a presider should become available on short notice during the week of June 1.
4. Further, it will avoid the Tribunal incurring undue expenses and counsel time required to attend in person.
5. Finally, the Tribunal has a limited role in this matter and is not aware of any prejudice to the parties or the Court if the Tribunal appears remotely. The Tribunal takes no position on the merits of the petition (but does take a position on costs if sought against the Tribunal and the declaration sought).

Position of the other parties:

1. The petitioner and the other respondent both consent to the Tribunal attending the hearing of this petition by video conference.

Contact information and role for any person whose participation is to be by video conference or telephone:

Date: 04/13/2026

\_\_\_\_\_  
Signature of  
Counsel for the Tribunal

**ORDER BY ENDORSEMENT** (to be completed by a judge, associate judge or registrar)

Order granted  refused

**Conditions or directions:**

\_\_\_\_\_  
\_\_\_\_\_

**Endorsed:**

\_\_\_\_\_  
Judge/Associate Judge/Registrar

Date: \_\_\_\_\_

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

Kirstin Chase Olsen

(the Petitioner)

AND:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

(the Respondents)

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**WRITTEN SUBMISSIONS OF THE PETITIONER**

---

**Lawyers for the Petitioner**  
RDM Lawyers LLP

Email:

**Tabitha Ewert**  
**Marty Moore**  
**Lawyers for the Petitioner**

**Application Date and  
Time:**  
**Place of Application:**  
**Time Estimate:**  
**Submitted by:**

**Assize week of June 1, 2026**  
**10:00 am**  
**Abbotsford Supreme Court**  
**2 days**  
**RDM Lawyers LLP**

## **I. TIME LIMIT FOR JUDICIAL REVIEW**

1. This Petition was originally filed on March 21, 2025. It was rejected by the registry and resubmitted on March 25, 2025 with no substantial change. [1<sup>st</sup> Affidavit of Marta Burghardt dated March 30, 2026].
2. This Petition was filed one day after the 60 days limit in the Administrative Tribunals Act.
3. All parties consent to the late filing of this Petition.
4. Administrative Tribunals Act [SBC 2004] CHAPTER 45 says the following.

**57** (1)Unless this Act or the tribunal's enabling Act provides otherwise, an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.

(2)Despite subsection (1), either before or after expiration of the time, the court may extend the time for making the application on terms the court considers proper, if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.

## **II. OVERVIEW OF FACTS**

5. Petition paragraphs 5-14.

## **III. STANDARD OF REVIEW – LEGISLATION**

6. Administrative Tribunals Act [SBC 2004] CHAPTER 45

### **Standard of review without privative clause**

**59** (1)In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2)A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3)A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

- (a) is exercised arbitrarily or in bad faith,
- (b) is exercised for an improper purpose,
- (c) is based entirely or predominantly on irrelevant factors, or
- (d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

#### 7. Human Rights Code [RSBC 1996] CHAPTER 210

#### **Application of Administrative Tribunals Act to tribunal**

32 The following provisions of the [Administrative Tribunals Act](#) apply to the tribunal:

- (p) section 57 [time limit for judicial review];
- (q) section 59 [standard of review without privative clause];

#### **IV. STANDARD OF REVIEW – CASE LAW**

8. The key question is whether the errors alleged are errors of fact or errors of mixed fact and law. It is the Petitioner's understanding that all parties agree to what standard applies to both categories but may disagree on which category applies.
9. *Lavender Co-Operative Housing Association v. Ford*, 2009 BCSC 1437 affirmed by *Lavender Co-Operative Housing Association v. Ford*, 2011 BCCA 114.
10. In this case, the alleged error was whether the respondent's one-member policy amounted to discrimination based on marital status.

[38] Madam Justice Levine, for the Court, found that there was nothing in the wording of s. 59 to indicate that the Legislature intended that questions of mixed fact and law be treated as findings of fact for the purposes of determining the standard of review, writing as follows, at para. 119:

[119] I am sympathetic to the Tribunal's arguments that the courts are not as well-suited as the Tribunal to make decisions about whether discrimination has been established, and that some deference has traditionally been found to be appropriate, despite the absence of a privative clause. The Tribunal was presumably established to make such decisions. Nonetheless, I cannot find in the words or the context of the Act any indication that the Legislature intended that questions of mixed fact and law be treated as "findings of fact" or excluded from the general rule of s. 59(1).

11. In conclusion, Justice Gray found:

[72] The standard of review for questions of mixed fact and law on judicial review of a decision of the BCHRT is correctness, pursuant to s. 59 of the *ATA*.

12. *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 says the following:

[48] In the case before us, there are two separate issues to be addressed. First, there is the question of the correct test for the establishment of a prima facie case of discrimination. The identification of the correct test is an issue of law, and the appropriate standard of review is correctness under s. 59(1) of the *Administrative Tribunals Act*.

[49] The question of whether facts have been established that meet the identified legal test, however, involves extricable issues of fact. The appropriate standard of review is that set out in s. 59(2). The Tribunal is entitled to deference on that issue. [emphasis added]

13. *Nanaimo (City of) v Mema*, 2025 BCSC 863

[21] The City claims that the Tribunal committed an error of law or mixed fact and law by, amongst other things, misapplying the legal test for drawing an inference of discrimination. The "catch-all" provision under s. 59(1) of the *ATA* captures error of law with the result that the standard of correctness applies.

[22] Questions of mixed fact and law involve applying a legal standard to a set of facts. These issues are also subject to the same provision of s. 59(1) of the *ATA* and therefore subject to the correctness standard: see *J.J. v. School District 43 (Coquitlam)*, 2013 BCCA 67 at para. 28; *Lavender Co-Operative Housing Assn. v. Ford*, 2011 BCCA 114 at para. 58.

[23] Although the standard of review is correctness, the Court of Appeal cautioned against too-readily finding that an issue is a matter of mixed fact and law; noting: “if there is an extricable issue of fact involved in the “mixed” question, the court must defer to the tribunal in respect of that issue in accordance with s. 59(2) of the *Administrative Tribunals Act*”: see *J.J.* at paras. 28 - 32.

14. As we go through each of the errors, I will address how each one falls under the “mixed fact and law” and are not a matter of “too-readily finding” it as such.
15. To be clear, the Petitioner is not taking issue with any findings of fact made by the Tribunal in this case. It is our argument that the legal tests were either misapprehended or were not applied correctly to the set of facts.

## V. ERRORS

16. Petition paragraphs 17-42.

## VI. STANDARD OF REVIEW AND BURDEN OF PROOF – CHARTER

17. In *York Region*, the Supreme Court of Canada held that the correctness standard applies to the questions of: 1) whether the *Charter* applies<sup>1</sup>; and 2) whether a *Charter* right arises, the scope of its protection and the appropriate framework of analysis.<sup>2</sup>
18. If the Tribunal’s Decision did infringe Ms. Olsen’s freedom of expression, the Tribunal has the burden to “demonstrate that they have given due regard to the important of the expressive rights at issue”.<sup>3</sup>

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<sup>1</sup> *York Region District School Board v Elementary Teachers’ Federation of Ontario*, [2024 SCC 22](#) [*York Region*] at para [62](#).

<sup>2</sup> *York Region* at para [63](#).

<sup>3</sup> See *Doré v. Barreau du Québec*, [2012 SCC 12](#) [*Doré*] at para [66](#) (“Disciplinary bodies must therefore demonstrate that they have given due regard to the importance of the expressive rights at issue, both in light of an individual lawyer’s right to expression and the public’s interest in open discussion.”); *Loyola High School v. Quebec (Attorney General)*, [2015 SCC 12](#) at para [38](#) (“The Charter enumerates a series of guarantees that can only be limited if the government can justify those limitations as proportionate.”); *Law Society of British Columbia v. Trinity Western University*, [2018 SCC 32](#) [*LSBC v TWU*] at para [80](#) (quoting *Loyola* at para 38); *UAlberta Pro-Life v Governors of the University of Alberta*, [2020 ABCA 1](#) at paras [159](#), [162](#) (“Furthermore, and of key importance, the onus on proving the ‘section 1 limit’ on expression freedom even under administrative law should be on the state agent as it is the exercise of power by an emanate of the state.”), [166](#), [169](#), [184](#), [215](#), [230](#); *McCarthy v. Whitefish Lake First Nation #128*, [2023 FC 220](#) at para [86](#); *Lethbridge and District Pro-Life Association v Lethbridge (City)*, [2020 ABQB 654](#) [*Lethbridge*] at para [89](#); *Baars v. Children’s Aid Society of Hamilton*, [2018 ONSC 1487](#) at para

19. If the Tribunal did engage in balancing of the *Charter* protection against the applicable statutory objective, the standard of review for that question is reasonableness.<sup>4</sup>

## VII. MS. OLSEN'S *CHARTER* FREEDOM OF EXPRESSION WAS ENGAGED BY THE TRIBUNAL DECISION

20. It cannot be seriously disputed that the Tribunal Decision against Ms. Olsen engaged her *Charter* freedom of expression. The Tribunal described the “nature of the discrimination” as follows:

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.<sup>5</sup>

21. The Supreme Court of Canada has provided the following test to determine whether an expressive activity is protected by the *Charter*:

In sum, to determine whether an expressive activity is protected by the *Charter*, we must answer three questions: (1) Does the activity in question have expressive content, thereby bringing it, *prima facie*, within the scope of s. 2(b) protection? (2) Is the activity excluded from that protection as a result of either the location or the method of expression? (3) If the activity is protected, does an infringement of the protected right result from either the purpose or the effect of the government action?<sup>6</sup>

22. Ms. Olsen's response to Terry Wiebe's question has expressive content. Even silence is a form expression protected by the *Charter*.<sup>7</sup>

23. In this case, the Tribunal mostly targeted Ms. Olsen's silence, in effect punishing Ms. Olsen for failing to provide a positive response in the context of a particular conversation. The

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122 [Baars]; *Canadian Centre for Bio-Ethical Reform v City of Peterborough*, [2016 ONSC 1972](#) at para 15.

<sup>4</sup> *Sikora v Deputy Director Community Safety Unit*, 2025 BCSC 57 at para 59.

<sup>5</sup> *Wiebe v. Olsen*, 2025 BCHRT 14 [Tribunal Decision] at para 169.

<sup>6</sup> *Canadian Broadcasting Corp. v. Canada (Attorney General)*, [2011 SCC 2](#) at para 38.

<sup>7</sup> *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at p. 1080.

freedom from compelled speech has long been recognized as an important part of section 2(b).<sup>8</sup>

24. Nothing in the location or method of Ms. Olsen’s private conversations with her friend could exclude it from Charter protection.
25. The Tribunal clearly intended to target Ms. Olsen’s response to Terry Weibe in its Decision, labelling it discrimination.
26. Further, The Tribunal’s Decision indubitably infringed Ms. Olsen’s freedom of expression by imposing a \$10,000 fine against her for her expressive conduct.

#### **VIII. THE TRIBUNAL’S DUTY TO CONSIDER AND PROPORTIONATELY BALANCE FREEDOM OF EXPRESSION**

27. The obligation to consider and proportionately balance *Charter* rights and values “arises when the outcome of an administrative decision limits *Charter* rights”.<sup>9</sup> This obligation can also arise when a party “has ‘squarely’ raised the issue and asks the decision maker to review state conduct that is contended to have interfered with a *Charter* right”,<sup>10</sup> but that is not required.
28. Justice Côté, writing for a unanimous Court in *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, gave a comprehensive description of government decision makers’ duty to consider *Charter* rights and values engaged by their decisions.<sup>11</sup>
29. The first step for the Court is to determine whether the administrative decision at issue engages the *Charter* by limiting a *Charter* right or value.<sup>12</sup>
30. The second step is to determine whether the decision maker considered the relevant *Charter* values: “An administrative decision maker must consider the *relevant* values

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<sup>8</sup> *National Bank of Canada v. Retail Clerks’ International Union et al.*, 1984 CanLII 2 (SCC), [1984] 1 SCR 269, 296.

<sup>9</sup> See *Gordon v British Columbia (Superintendent of Motor Vehicles)*, 2022 BCCA 260 [*Gordon*] at para 53.

<sup>10</sup> *Gordon* at para 53.

<sup>11</sup> See *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 [*Commission scolaire*] at paras 60-73.

<sup>12</sup> *Commission scolaire* at para 61.

embodied in the *Charter*, which act as constraints on the exercise of the powers delegated to the decision maker”.<sup>13</sup>

31. The third step is to determine “whether the exercise of discretion reflects a ‘proportionate balancing’ of *Charter* rights and the values underlying them, on the one hand, with the statutory objectives in respect of which the discretion was granted, on the other”.<sup>14</sup>
32. In this case, the focus will be on the second step which has a binary answer: did the Tribunal actually considered Ms. Olsen’s *Charter* freedom of expression, or not.
33. Justice Côté was clear on the importance of this consideration: “To be reasonable, a decision must reflect the fact that the decision maker considered the *Charter* values that were relevant to the exercise of its discretion”.<sup>15</sup>
34. This consideration cannot be mere lip service,<sup>16</sup> but must be meaningful: “The decision must also show that the decision maker ‘meaningfully’(*Vavilov*, at para. 128) addressed the *Charter* protections to ‘reflect’ the impact that its decision may have on the concerned group or individual (para. 133)”.<sup>17</sup>
35. Justice Rowe, writing for the majority in *York Region District School Board v. Elementary Teachers’ Federation of Ontario*,<sup>18</sup> applied these principles to the decision of an arbitrator which had failed to recognize that the section 8 *Charter* right to be free from unreasonable search and seizure applied to protect the interests of the teachers before her. Justice Rowe held that “when a *Charter* right applies, there must be clear acknowledgment of and analysis of that right.”<sup>19</sup> The failure of the arbitrator to do so was a “fatal” error.<sup>20</sup>

## **IX. THE TRIBUNAL FAILED TO CONSIDER THE *CHARTER* FREEDOM OF EXPRESSION, AT ALL**

36. Likewise, the Tribunal committed a fatal error by failing to recognize that Ms. Olsen’s *Charter* section 2(b) freedom of expression applied. Nowhere in their Decision does the

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<sup>13</sup> *Commission scolaire* at para 66.

<sup>14</sup> *Commission scolaire* at para 67.

<sup>15</sup> *Commission scolaire* at para 68.

<sup>16</sup> *Lethbridge* at paras. 108-109, 112; *Guelph and Area Right to Life v. City of Guelph*, 2022 ONSC 43 at paras. 61, 87.

<sup>17</sup> *Commission Scolaire* at para 68.

<sup>18</sup> *York Region District School Board v. Elementary Teachers’ Federation of Ontario*, 2024 SCC 22 [York Region].

<sup>19</sup> *York Region* at para 94.

<sup>20</sup> See *York Region* at paras 68-69, 94.

Tribunal acknowledge, let alone attempt to proportionately balance, Ms. Olsen's Charter freedom of expression. The Tribunal's decision thus fails at the second step of the analysis.

37. A recent example of a court on judicial review finding an administrative decision unreasonable for failing at this second step is the case of *Evely v Nova Scotia (Minister of Natural Resources)*.<sup>21</sup> There Justice Campbell of the Nova Scotia Supreme Court applied *Commission scolaire* and found a decision to impose a travel ban on people entering the woods was unreasonable because there was no evidence in the record showing that the decision maker had considered the *Charter* section 6 mobility rights limited by the decision.<sup>22</sup> Justice Campbell held:

In this case the analysis ends at the second stage. *Charter* rights or values were engaged by the decision and there is no evidence that the Minister considered them.<sup>23</sup>

38. The Tribunal's response is that Ms. Olsen – who was self-represented before the Tribunal – did not rely on the *Charter* and implies therefore that this Court should refuse to consider the *Charter* issue.<sup>24</sup>
39. This response does not excuse a government decision maker – in this case composed of a panel of lawyers<sup>25</sup> – from its failure to recognize that the *Charter* freedom of expression is engaged a government tribunal's decisions of 1) whether comments violate a statutory prohibition on discrimination and 2) how much of a financial consequence to impose for such comments.
40. It is not necessary for parties, self-represented, layperson or otherwise, to ask government decision makers to consider *Charter* rights engaged by their decisions: they are constitutionally obligated to do so.<sup>26</sup> Justice Rowe pointed out in *York Region* that “the arbitrator was not asked to consider whether s. 8 of the *Charter* had been infringed”.<sup>27</sup> Yet,

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<sup>21</sup> *Evely v. Nova Scotia (Minister of Natural Resources)*, [2026 NSSC 1](#).

<sup>22</sup> *Evely* at paras 9, 31-42.

<sup>23</sup> *Evely* at para 40.

<sup>24</sup> Tribunal's Response to Petition, paras 35, 38, 40.

<sup>25</sup> The Court can take judicial notice of the fact that all the Tribunal Members on the panel – Devyn Cousineau, Robin Dean, and Andrew Robb – are lawyers:

<https://www.bchrt.bc.ca/tribunal/organization/members/>.

<sup>26</sup> *Commission Scolaire* at para 65, 77; *LSBC v TWU* at para 41; *Doré* at paras 24, 35;

<sup>27</sup> *York Region* at para 18.

it was still “incumbent on the arbitrator to proactively address the s. 8 issue that manifested itself on the facts of the grievance.”<sup>28</sup>

41. Highlighting the fact that parties’ action or inaction cannot relieve government decision makers of their constitutional obligations, Justice Rowe held that “arbitrators cannot disregard the *Charter’s* requirements where it applies by applying another analytical framework, even by consent.”<sup>29</sup>

42. In *Commission scolaire*, Justice Côté explained different ways in which Charter rights or values arise for consideration:

In practice, it will often be evident that a value must be considered, whether because of the nature of the governing statutory scheme, because the parties raised the value before the administrative decision maker, or because of the link between the value and the matter under consideration[.]<sup>30</sup>

43. As discussed above, the matter under consideration – whether Ms. Olsen’s response to Terry Wiebe was discriminatory and whether it warranted an order from a government decision maker that Ms. Olsen pay \$10,000 – was linked to the Charter freedom of expression which was at stake.

44. In a more recent decision, the Tribunal recognized that, despite the respondent’s position that “he was not asking the Tribunal to balance his *Charter* rights”, “it was incumbent on us to balance his right to free expression in the application of s. 7(1)(a) of the *Code* and we have done so”.<sup>31</sup> Likewise, in this case where the Tribunal was determine whether to deem Ms. Olsen’s expressive conduct “discrimination” and order a significant financial penalty, “it was incumbent” on the Tribunal to balance Ms. Olsen’s right to free expression.

45. The Tribunal however, failed to recognize that Ms. Olsen’s Charter freedom of expression was engaged by its decision, and utterly failed to clearly acknowledge and analyze that right. In the words of Justice Rowe, this error is fatal.

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<sup>28</sup> *York Region* at para 91 [emphasis added].

<sup>29</sup> *York Region* at para 92.

<sup>30</sup> *Commission Scolaire* at para 66 [internal citations omitted].

<sup>31</sup> See *Chilliwack Teachers’ Association v. Neufeld (No. 10)*, [2026 BCHRT 49](#) at para 21. It must be noted however, that the Tribunal failed entirely to acknowledge that the *Charter* was engaged in its determination of whether Neufeld’s public comments amounted to discrimination under section 13. Counsel understands that this decision is being challenged on judicial review.

46. The Decision is unreasonable, because it does not show that the Tribunal considered the Charter values that were relevant to the exercise of its discretion.

**X. THE TRIBUNAL DECISION DOES NOT REFLECT A PROPORTIONATE BALANCE OF MS. OLSEN'S CHARTER FREEDOM OF EXPRESSION WITH THE CODE'S STATUTORY OBJECTIVES.**

47. Even if the Tribunal had recognized that Ms. Olsen's Charter freedom of expression was engaged by its decision and attempted to balance that right with the purposes of the Code, the Tribunal Decision, in finding Ms. Olsen's expression to be discrimination and in imposing a \$10,000 penalty for that expression, does not reflect a proportionate balance.

48. The Supreme Court of Canada's decision in *LSBC v TWU* sets out the relevant considerations for determining whether a decision is proportionate in limiting *Charter* protections.<sup>32</sup>

*i. The Code's purposes*

49. Section 3 of the *Human Rights Code* particularizes the legislation's "purposes":

The purposes of this Code are as follows:

(a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;

(b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;

(c) to prevent discrimination prohibited by this Code;

(d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;

(e) to provide a means of redress for those persons who are discriminated against contrary to this Code.<sup>33</sup>

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<sup>32</sup> *LSBC v TWU* at paras 80-82.

<sup>33</sup> *Human Rights Code*, RSBC 1996, c 210 at s. 3.

50. Section 10 of the *Human Rights Code* protects tenants from discrimination in the landlord-tenant context. This section's specific purpose is to ensure equal treatment and substantive equality in housing. It does this by preventing adverse treatment (e.g., eviction, rent increases, or material interference with quiet enjoyment).
51. These objectives are important but must be advanced in a manner that is proportionate to, and minimally impairing of, *Charter* rights.<sup>34</sup>
- ii. Tribunal's determination of adverse impact
52. The Tribunal relied on two earlier Tribunal decisions (neither of which considered the *Charter*) that listed factors for determining whether "negative comments" could constitute an adverse impact under the *Code*.<sup>35</sup>
53. Relying on older precedents to deem expression discrimination is not acceptable given the Supreme Court of Canada's binding pronouncement in 2021 that "[a] discrimination claim must be limited to expression whose effects are truly discriminatory."<sup>36</sup> In *Ward*, the Court was concerned with a tribunal decisions which "dispenses with any fair balancing of freedom of expression and protection of the right to the safeguard of dignity" but rather created "a second avenue of recourse for discrimination, parallel to an action in defamation, to compel a person to answer for the harm caused by their words".<sup>37</sup>
54. The Court in *Ward* held that the tribunal and the lower courts had "erred in excluding *Whatcott* from their reasoning".<sup>38</sup> Relying on *Whatcott*, the Court warned against "censoring expression because of its content or its impact on a person, regardless of its discriminatory effects."<sup>39</sup>
55. The Court in *Ward* also provided relevant observations about "expression that occurs in private", emphasizing against that "the analysis must be focused on the likely discriminatory

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<sup>34</sup> *Dore* at paras. 35-58; *Loyola* at para. 39

<sup>35</sup> Decision at para 132, citing *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.

<sup>36</sup> *Ward* at para 30.

<sup>37</sup> *Ward* at para 29.

<sup>38</sup> *Ward* at para 71.

<sup>39</sup> *Ward* at para 82.

effects of the expression, not on the emotional harm suffered by the person alleging discrimination.”<sup>40</sup>

56. The Court in *Ward* set out a *Charter*-informed test for whether the expression at issue could be found discriminatory:

It must first be asked whether a reasonable person, aware of the relevant context and circumstances, would view the expression targeting Mr. Gabriel as inciting others to vilify him or to detest his humanity on the basis of a prohibited ground of discrimination. It must then be asked whether this reasonable person would view the expression, considered in its context, as likely to lead to discriminatory treatment of Mr. Gabriel. In our opinion, the comments made by Mr. Ward meet neither of these two requirements.<sup>41</sup>

57. While the Court in *Ward* noted that “Mr. Gabriel’s testimony spoke volumes about the pain caused to him by those hurtful words, which date back to a time when he was still a young teenager”, the “legal framework is focused on the likely discriminatory effects of the comments, not on the emotional harm suffered by the person targeted.”<sup>42</sup>

58. A recent case from the Nova Scotia Supreme Court applied *Ward* to a decision of the *Nova Scotia Human Rights Commission* accepted a discrimination complaint based on a professor’s public expression criticizing his university’s approach to indigenous issues and students.<sup>43</sup> An indigenous student whose specific experiences had been described by the professor had filed the complaint, alleging discrimination in access to services based on ethnic, national or aboriginal origin.<sup>44</sup> The ground of discriminatory publication was added later.<sup>45</sup>

59. The complainant alleged significant personal affects.<sup>46</sup>

60. Similar to the present case, the human rights decision maker had failed to consider freedom of expression.<sup>47</sup> This was found to be a “significant and substantive flaw”: “the Commission

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<sup>40</sup> *Ward* at para 86.

<sup>41</sup> *Ward* at para 104.

<sup>42</sup> *Ward* at para 107.

<sup>43</sup> *Saint Mary’s University v. Nova Scotia Human Rights Commission*, [2025 NSSC 107](#) [*Saint Mary’s*].

<sup>44</sup> *Saint Mary’s* at paras 6, 10

<sup>45</sup> *Saint Mary’s* at para 19.

<sup>46</sup> *Saint Mary’s* para 11.

<sup>47</sup> See *Saint Mary’s* at paras 72-73.

could not have addressed this Complaint without at least considering the fundamental issue of freedom of expression.”<sup>48</sup>

61. Relying on *Ward*, Justice Boudreau found that “being upset or offended is not the same as discrimination.”<sup>49</sup> The decision to accept the complaint was found unreasonable and quashed.<sup>50</sup>
62. In the present case, the Tribunal’s conclusion on discrimination similarly shows an improper focus on the subjective effect of expression on the complaint, while failing to recognize the constitutionally-mandated fact that being offended is not discrimination.<sup>51</sup>
63. The Tribunal’s own findings show that underlying purposes for freedom of expression were engaged. In regard to her friend getting a double mastectomy, Ms. Olsen was afraid for her friend, given the negative experience of her own mother’s mastectomy.<sup>52</sup> Being able to express one’s view of the truth about mastectomy, and communicate one’s fear for another’s well-being engage core principles of truth seeking and self-fulfillment underlying *Charter* free expression.<sup>53</sup> Yet, despite the fact that the Tribunal acknowledged that “there was at least some non-discriminatory basis for Ms. Olsen’s discomfort with top surgery”,<sup>54</sup> her response was deemed prohibited discrimination under the *Code*.
64. In terms of advancing the purposes of the *Code*, it should be noted: Ms. Olsen’s comments to Terry Wiebe were not public statements. They occurred between people who had been close friends. There is no suggestion Ms. Olsen’s comments incited others to vilify or detest Terry Wiebe’s humanity.
65. Further, Ms. Olsen’s impugned response did not cause a change in rent, an eviction notice, or other tangible detriment to Terry Wiebe: the harm alleged is entirely based on the subjective feelings and effect on Terry Wiebe. The Tribunal itself accepted that the eviction was for wholly non-discriminatory reasons unrelated to gender identity.

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<sup>48</sup> *Saint Mary’s* at paras 75, 79.

<sup>49</sup> *Saint Mary’s* at para 80.

<sup>50</sup> *Saint Mary’s* at para 88.

<sup>51</sup> See *Tribunal Decision* at paras 143-144.

<sup>52</sup> *Decision* at paras 140.

<sup>53</sup> *Irwin Toy Ltd. v. Quebec*, [1989] 1 SCR 927 at 976-977.

<sup>54</sup> *Decision* at para 140.

66. In light of *Whatcott* and *Ward*, it cannot be said that the Tribunal's decision deeming Ms. Olsen's comments to Terry Wiebe prohibited discrimination<sup>55</sup> affects the freedom of expression as little as reasonably possible and gives effect, as fully as possible to that freedom given the particular statutory mandate.<sup>56</sup> Therefore, that decision is not proportionate.

iii. The Tribunal's \$10,000 award

67. Likewise, the Decision to impose a \$10,000 penalty on Ms. Olsen for "injury to dignity" of Terry Wiebe is an unreasonable and disproportionate limit on her *Charter* freedom of expression.

68. While upholding human dignity is undoubtedly an important statutory objective (as well as an underlying value the *Charter*<sup>57</sup>), it applies to both Terry Wiebe and Ms. Olsen. As the Court held in *Ward*, "freedom of expression flows from the concept of human dignity".<sup>58</sup>

69. When a government tribunal imposes a public \$10,000 penalty against an individual because of their comment of concern, and failing to provide compelled assurance, it cannot be doubted that such action undermines that individual's dignity. Yet, the Tribunal failed entirely to take such *Charter*-informed considerations into account. Rather, the Tribunal focused entirely on the subjective impact it viewed the expression had on Terry Wiebe.<sup>59</sup> As *Ward* explained, this is an improper and unconstitutionally narrow focus for a Tribunal to have in imposing limits on expression.

70. Further, in regard to a financial penalty on expression, even a limit could be justified under the precedents of *Whatcott* and *Ward*, there was clearly an option open to the Tribunal that would have reduced the impact on Ms. Olsen's freedom of expression while still sufficiently further the relevant statutory objectives: a significantly reduced financial consequence.

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<sup>55</sup> See also *Decision* at para 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*."

<sup>56</sup> See *LSBC v TWU* at para 80.

<sup>57</sup> *Ward* at para 48.

<sup>58</sup> *Ward* at para 59.

<sup>59</sup> *Ward* at para 191.

71. The Tribunal found no tangible impact on Terry Wiebe's living situation, but chose instead to police the private conversation between two individuals with past friendship and a longstanding relationship. The negative impacts of the Tribunal's decision are profound.
72. The Tribunal's decision penalizes expression of beliefs that are sincerely held, rooted in one's life experience (family history of breast cancer, former nursing background, feminist upbringing<sup>60</sup>), and part of legitimate public debate about the use of medical procedures. The purported adverse effect is based entirely on the private, conversational response to Wiebe's question about whether the tenancy would remain secure if Wiebe obtained top surgery.
73. Finally, the Tribunal's decision chills honest conversation between a host of societally connected persons (landlord/tenant, hairdresser/customer, supervisor/sales association, etc) on a plethora of personal or political issues.
74. The Tribunal failed weigh or consider any of these constitutional impacts. This stems from the fact, as explained above, that the Tribunal failed to consider the engaged *Charter* freedom of expression, at all.

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<sup>60</sup> *Decision* at paras 28, 140.

*In the Supreme Court of British Columbia*  
In the Matter of the *Judicial Review Procedure Act*, SBC 1996, c. 241

Between:

Kirstin Chase Olsen

Petitioner

And:

British Columbia Human Rights Tribunal and Theresa (Terry) Wiebe

Respondents

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**WRITTEN SUBMISSIONS OF THE RESPONDENT THERESA (TERRY) WIEBE**

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**Counsel for the Respondent, Theresa  
(Terry) Wiebe**

**Application Date: Assize week of June 1, 2026**  
**Time: 10:00 am**  
**Place of Application: Abbotsford Supreme Court**

## **Overview**

1. On this judicial review, the Petitioner, Kirstin Chase Olsen, seeks to quash a Decision issued January 22, 2025 (the “**Decision**”) of the B.C. Human Rights Tribunal (the “**Tribunal**”) awarding the Respondent Terry Wiebe \$10,000 as compensation for the injury to their dignity, feelings, and self-respect for the adverse impact Ms. Olsen had on Terry Wiebe’s tenancy contrary to s. 10 of the British Columbia Human Rights Code (the “**Code**”).
2. Ms. Olsen’s grounds for review are an attempt to re-argue the case. She has not demonstrated any error in the Decision, let alone the patent unreasonableness required to meet the high standard of review for a discretionary decision of the Tribunal.
3. The judicial review should be dismissed, with costs to Terry Wiebe.

## **Background**

4. Terry Wiebe lived in a motorhome on the property owned by Ms. Olsen from 2014 to 2018.<sup>1</sup> Terry Wiebe made payments to Ms. Olsen to keep their motorhome on the property, in money and in work performed for Ms. Olsen’s business.<sup>2</sup>
5. Terry Wiebe is transgender and uses the pronouns they/them.

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<sup>1</sup> Decision at para. 2.

<sup>2</sup> Decision at para. 98.

6. In April 2017, Terry Wiebe disclosed to Ms. Olsen that they were planning to change their gender<sup>3</sup> and that they had started hormone treatment.<sup>4</sup> Ms. Olsen discouraged Terry Wiebe from changing their gender and asked Terry Wiebe if they were considering top surgery.<sup>5</sup> Upon learning that Terry Wiebe was considering top surgery, Ms. Olsen discouraged them from “mutilating” their body<sup>6</sup> and expressed that she was not supportive of surgery.<sup>7</sup> The relationship between the two subsequently deteriorated.<sup>8</sup>
7. Between 2017 and 2018, Terry Wiebe asked Ms. Olsen, on several occasions, if their tenancy would be impacted if they got gender-affirming surgery.<sup>9</sup> Ms. Olsen did not answer the question directly but stated that she was uncomfortable with it and did not support it.<sup>10</sup>
8. In 2018, Ms. Olsen evicted Terry Wiebe.<sup>11</sup>
9. Terry Wiebe commenced a claim to the Tribunal on September 11, 2019, alleging Ms. Olsen discriminated against them in their tenancy, based on their gender identity or expression, contrary to s. 10 of the *Code*.

10. The Tribunal found<sup>12</sup>:

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<sup>3</sup> Decision at para. 3.

<sup>4</sup> Decision at para. 25.

<sup>5</sup> Decision at paras. 26-27.

<sup>6</sup> Decision at para. 36.

<sup>7</sup> Decision at para. 27.

<sup>8</sup> Decision at para. 42.

<sup>9</sup> Decision at para. 3.

<sup>10</sup> Decision at paras. 3-4.

<sup>11</sup> Decision at para. 3.

<sup>12</sup> Decision at para. 7.

- a) The parties' relationship was a tenancy;
- b) Ms. Olsen evicted Terry Wiebe for non-discriminatory reasons;
- c) Gender identity or expression was not a factor in the eviction. Rather, Ms. Olsen evicted Terry Wiebe for non-discriminatory reasons; and
- d) Ms. Olsen was responsible for an adverse impact on Terry Wiebe's tenancy, which was connected to their gender identity and had discriminated against Terry Wiebe.

11. As a remedy, the Tribunal ordered Ms. Olsen to pay Terry Wiebe \$10,000 as compensation for the injury to their dignity, feelings, and self-respect.<sup>13</sup>

### **Issues**

12. Ms. Olsen alleges that the Decision contains the following errors:

- a) That Ms. Olsen and Terry Wiebe had a tenancy relationship within the meaning of s. 10 of the *Code*;
- b) That Terry Wiebe experienced an adverse impact regarding a term or condition of their tenancy as a result of Ms. Olsen not being supportive of top surgery;
- c) That gender identity or expression was a factor in the adverse impact Terry Wiebe experienced;

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<sup>13</sup> Decision at para. 8.

- d) That Ms. Olsen’s freedom of expression under s. 2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, *Canada Act (UK)*, 1982, c. 11 (the “**Charter**”) was disregarded and not balanced with the purpose of the *Code*; and
- e) That the award of \$10,000 was disproportionate.

13. Terry Wiebe denies that the Tribunal made any of the above errors.

### **Standard of Review**

14. The court performs a limited role on judicial review. It does not sit as an appellate court or re-try the matters decided by the tribunal. The court cannot re-weigh the evidence, make findings of credibility, or substitute its view of the merits of that of the tribunal. The court is not permitted to set aside a decision of a statutory tribunal simply because it would have reached a different conclusion. Rather, the court’s role is to assess, on application of the proper standard of review, whether the tribunal has made a reviewable error justifying the court’s intervention.<sup>14</sup>

15. Section 32 of the *Code* incorporates provisions of the *Administrative Tribunals Act*, S.B.C 2004, c. 45, (the “**ATA**”), including s. 59(3) of the *ATA*, which states:

59 (1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

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<sup>14</sup> *Kinexus Bioinformatics Corporation v. Asad*, 2010 BCSC 33 at paras. 12-13.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

16. The Tribunal's decision about whether a term or condition of a tenancy was discriminatory under s. 10 of the *Code* is reviewable on the reasonableness standard and entitled to deference. Whether there is a nexus between the adverse treatment and a prohibited ground of discrimination is a question of fact.<sup>15</sup> The Tribunal is "entitled to deference in respect of its assessment of the connection between prohibited grounds of discrimination and the impugned acts."<sup>16</sup> The Court of Appeal recently confirmed that findings that a protected characteristic is a factor in the adverse treatment is a finding of fact and therefore entitled to the deferential standard of review stated in s. 59(2) of the *ATA*.<sup>17</sup>

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<sup>15</sup> *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 ("**VANDU**") at para. 81.

<sup>16</sup> *VANDU* at para. 9.

<sup>17</sup> *Nanaimo (City) v. Mema*, 2026 BCCA 203 at para. 42.

17. The Court of Appeal stated in *VANDU*:

The question of whether facts have been established that meet the identified legal test, however, involves extricable issues of fact. The appropriate standard of review is that set out in s. 59(2). The Tribunal is entitled to deference on that issue.<sup>18</sup>

18. The Court of Appeal in *J.J. v. School District No. 43 (Coquitlam)*, 2013 BCCA 67, cautioned:

it is important that courts not be too quick to brand a question as one of mixed fact and law and therefore subject to a standard of correctness. If there is an extricable issue of fact involved in the ‘mixed’ question, the court must defer to the tribunal in respect of that issue in accordance with s. 59(2) of the Administrative Tribunals Act.<sup>19</sup>

19. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (“*Vavilov*”), the Supreme Court of Canada gave instructions on how a reasonableness review should be conducted:

As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons

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<sup>18</sup> *VANDU* at para. 49.

<sup>19</sup> at para. 28.

first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion [citations omitted] [emphasis added].<sup>20</sup>

Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision [emphasis added].<sup>21</sup>

20. If this Court decides that the *Charter* argument is reviewable, then the standard is reasonableness.<sup>22</sup> *Vavilov* provided a distinction between the standard of review that applies when there is a constitutional challenge to an enabling statute and when a decision-maker has had to proportionately balance *Charter* protections.<sup>23</sup> The standard of review of correctness applies to the former while allegations that an administrative decision has unjustifiably limited a *Charter* right

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<sup>20</sup> at para. 84.

<sup>21</sup> *Vavilov* at para. 85.

<sup>22</sup> *Vabuolas v. British Columbia (Information and Privacy Commissioner)*, 2025 BCCA 83 (“*Vabuolas*”) at para. 96.

<sup>23</sup> at para 57.

is reviewable on the deferential standard of reasonableness.<sup>24</sup>

21. The BC Court of Appeal recently addressed the implications of *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 ("**York Region**")<sup>25</sup>:

It is difficult to assess the full implications of *York Region* for the standard of review analysis under the *Doré/Loyola* framework, particularly because the majority did not expressly purport to overrule or modify the established framework. At the very least, *York Region* seems to suggest that different standards of review may apply to the two stages of the analysis: (1) correctness to the preliminary question identified in *Loyola* as to whether the *Charter* applies (which would include the scope of the *Charter* protection and the appropriate framework of analysis), and (2) reasonableness to the proportionate balancing that occurs at the second stage.

22. Decisions by the Tribunal on the amount to be awarded for injury to dignity are discretionary decisions that are reviewed on the standard of patent unreasonableness pursuant to s. 59(4) of the *ATA*.<sup>26</sup>

23. Patent unreasonableness is the most deferential standard of review known to Canadian law. For a decision to be patently unreasonable, it must be "clearly

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<sup>24</sup> *Vavilov* at para. 57.

<sup>25</sup> *Vabuolas* at para. 96.

<sup>26</sup> *University of British Columbia v. Kelly*, 2016 BCCA 271 ("**Kelly**") at para. 55.

irrational”, “evidently not in accordance with reason” or “so flawed that no amount of curial deference can justify letting it stand.”<sup>27</sup>

### ***Tenancy Relationship between the Petitioner and the Respondent***

24. The Decision explained that tenancy under s. 10 of the *Code* has been interpreted broadly to ensure that it achieves its broad public purpose.<sup>28</sup> The Tribunal properly identified and applied the contextual analysis and legal principles to determine whether there was a tenancy relationship under s.10 of the *Code*.<sup>29</sup>

25. The Tribunal found that the relationship between Ms. Olsen and Terry Wiebe was a tenancy within the meaning of s. 10 of the *Code*.<sup>30</sup> The Tribunal made this determination having acknowledged that Ms. Olsen and Terry Wiebe also had a complex personal and employment 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.<sup>31</sup>

26. Ms. Olsen’s position is that her relationship with Terry Wiebe is more akin to that in *Brooks v. Skyacres Turkey Ranch Ltd. and others* (No. 2), 2022 BCHRT 73 (“**Brooks**”) and *Oloresisimo v. Oloresisimo-Esquivel and Esquivel*, 2005 BCHRT 64

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<sup>27</sup> *Mardones v. British Columbia (Workers’ Compensation Appeals Tribunal)*, 2023 BCSC 385 at paras. 30-31.

<sup>28</sup> Decision at paras. 93-94.

<sup>29</sup> Decision at paras. 95-97.

<sup>30</sup> Decision at paras. 92.

<sup>31</sup> Decision at para. 105.

(“*Oloresisimo*”) than *McCulloch v. British Columbia (Human Rights Tribunal)*, 2019 BCSC 624 (“*McCulloch*”).

27. Ms. Olsen argues that the Tribunal erred in not considering *Brooks* and *Oloresisimo*.

The Decision references both *Brooks* and *Oloresisimo*.<sup>32</sup> The Tribunal appropriately considered all the relevant jurisprudence.

28. The facts of this case are distinguishable from both *Oloresisimo* and *Brooks*.

29. In *Oloresisimo*, the claimant moved in with the respondents to work as a live-in caregiver for their son.<sup>33</sup> The parties had signed and renewed employment contracts.<sup>34</sup> The claimant himself acknowledged that when his employment was terminated, he was staying with the respondents as a guest.<sup>35</sup> While staying with the respondents as a guest, he did not pay them rent or provide them with other consideration.<sup>36</sup>

30. Similarly, in *Brooks*, when the claimant moved onto the property, his salary was reduced to account for his housing and utilities.<sup>37</sup> There was no payment of rent or offer of any other consideration in exchange for accommodation.<sup>38</sup> The parties were in agreement that the claimant’s housing was part of his employment and that there was a tenancy relationship during the term of the employment.<sup>39</sup> After the

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<sup>32</sup> Decision at paras. 94, 98, 124 & 185.

<sup>33</sup> *Oloresisimo* at para. 3.

<sup>34</sup> *Oloresisimo* at para. 19.

<sup>35</sup> *Oloresisimo* at paras. 12 & 19.

<sup>36</sup> *Oloresisimo* at para. 19.

<sup>37</sup> *Brooks* at para. 71.

<sup>38</sup> *Brooks* at para. 227.

<sup>39</sup> *Brooks* at para. 211.

employment relationship ended, none of the factors which may be indicia of a tenancy relationship existed.<sup>40</sup>

31. In this case, the Tribunal found there were several factors present indicating a tenancy relationship. Specifically, the Tribunal found there was an exchange of money, services or other consideration in exchange for lodging, a pre-agreed term, some degree of permanence, and an intention to create a tenancy.

32. The Tribunal noted that the parties agreed that Terry Wiebe could move their motorhome onto Ms. Olsen's property in return for payment.<sup>41</sup> While there was never a written tenancy agreement, the parties agreed to rent initially at \$100 per month and later increased to \$200, which included some utilities. Terry Wiebe sometimes satisfied rent through work performed at Ms. Olsen's shop and around her property.<sup>42</sup>

33. The Tribunal also determined that both the parties intended for Terry Wiebe to live on the property for an indefinite time and accepted the arrangement to have a degree of permanency.<sup>43</sup> Terry Wiebe believed they could stay on the property as long as they wanted and indefinitely<sup>44</sup> and Ms. Olsen had stated they would not have to move unless Ms. Olsen moved.<sup>45</sup> Importantly, Ms. Olsen never stated that Terry Wiebe could only live on her property as long as Terry Wiebe worked for her or for the duration of their personal relationship.

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<sup>40</sup> *Brooks* at para. 219.

<sup>41</sup> Decision at para. 114(a).

<sup>42</sup> Decision at para. 17.

<sup>43</sup> Decision at paras. 99-102.

<sup>44</sup> Decision at para. 114(b).

<sup>45</sup> Decision at paras. 99-100.

34. Terry Wiebe had safe, secure, and long-term housing on Ms. Olsen's property.<sup>46</sup>

Terry Wiebe incurred significant costs to make their motorhome more permanent and comfortable.<sup>47</sup> The modifications undertaken to convert it into a permanent structure rendered the motorhome undriveable.<sup>48</sup> Ms. Olsen encouraged some of these modifications and did not object to any of them.<sup>49</sup>

35. The Tribunal considered the parties' conduct and found that there was an intention to create a tenancy. The Tribunal accepted that their friendship was an explanation for the low rent that Ms. Olsen charged, allowed Terry Wiebe to hook up to her utilities, and run their business on her property.<sup>50</sup> However, Ms. Olsen took Terry Wiebe's rights in the motorhome seriously and the Tribunal found that Terry Wiebe's exclusive possession over the interior of the motorhome<sup>51</sup> undermined Ms. Olsen's argument that Terry Wiebe was on her property under an informal arrangement between friends.<sup>52</sup> The Tribunal found that based on the parties' conduct, they intended their relationship to involve at least some legal rights consistent with a tenancy relationship, such as the right to exclusive possession.<sup>53</sup>

36. Lastly, the Tribunal considered the language Ms. Olsen used to describe Terry Wiebe as relevant to the parties' intentions.<sup>54</sup> Ms. Olsen referred to Terry Wiebe as her tenant and herself as the landlord in her submissions to the Residential Tenancy

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<sup>46</sup> Decision at para. 102.

<sup>47</sup> Decision at para. 101.

<sup>48</sup> Decision at para. 114(b).

<sup>49</sup> Decision at para. 101.

<sup>50</sup> Decision at para. 105.

<sup>51</sup> Decision at para. 111.

<sup>52</sup> Decision at para. 107.

<sup>53</sup> Decision at para. 114 (c).

<sup>54</sup> Decision at para. 108.

Branch and in the eviction notice.<sup>55</sup> The Tribunal's finding of fact was that it was more likely than not that Ms. Olsen described Terry Wiebe as her tenant when speaking to others.<sup>56</sup> The Tribunal concluded:

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.<sup>57</sup>

37. Ms. Olsen argues that the Tribunal erred in finding that she and Terry Wiebe had a tenancy relationship because Ms. Olsen did not demand rent and the rent was below market rate.<sup>58</sup> This Court in *McCulloch* found that the Tribunal made an extricable error of law when they concluded that without the payment of rent or some other form of consideration, that an occupant of a premise is not protected by s. 10 of the *Code*.<sup>59</sup>

38. The absence of rent or below market rate rent does not automatically preclude a tenancy relationship. Rather, it is the overall context and the relationship between the parties that are more significant than the presence of a formal lease or payment arrangement.<sup>60</sup> It was an undisputed fact in this case that Terry Wiebe did pay rent and other consideration in exchange for keeping their motorhome on the property.<sup>61</sup>

39. Lastly, Ms. Olsen alleges that the Tribunal erred in finding that the relationship was a tenancy according to the *McCulloch* factors. Specifically, Ms. Olsen argues the

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<sup>55</sup> Decision at para. 109.

<sup>56</sup> Decision at para. 109.

<sup>57</sup> Decision at para. 109.

<sup>58</sup> Petition at para. 23.

<sup>59</sup> *McCulloch* at paras. 123-124.

<sup>60</sup> *McCulloch* at para. 130.

<sup>61</sup> Decision at para. 17.

Tribunal erred by placing emphasis on the control she had over the land because Terry Wiebe had the option of moving their motorhome and maintaining their living space in a different location.<sup>62</sup> However, the Tribunal accepted that Terry Wiebe had taken steps to make their motorhome a permanent structure and undrivable.<sup>63</sup>

40. The Tribunal appropriately applied the *McCulloch* factors. Ms. Olsen had control over Terry Wiebe's housing and exercised that control when she forced them off the property.<sup>64</sup> Ms. Olsen was in control of the land where Terry Wiebe's motorhome was parked.<sup>65</sup> As the landowner, she demonstrated this control by evicting Terry Wiebe and indicating that, if they failed to vacate the property by January 31, 2019, she would file a writ of possession and have a sheriff enforce the eviction.<sup>66</sup>

41. The Tribunal's finding that the relationship between Ms. Olsen and Terry Wiebe was a tenancy within the meaning of s. 10 of the *Code* is a finding of fact that requires deference and this Court cannot reweigh the evidence.

### ***Adverse Impact***

42. The Decision articulated the circumstances the Tribunal considers when there is an allegation of adverse impact based on negative comments or harassment<sup>67</sup> and then addressed the relevant circumstances in this case.<sup>68</sup>

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<sup>62</sup> Petition at para. 26.

<sup>63</sup> Decision at para. 101.

<sup>64</sup> Decision at para. 114 (d).

<sup>65</sup> Decision at para. 112.

<sup>66</sup> Decision at paras. 71 & 112.

<sup>67</sup> Decision at para. 132.

<sup>68</sup> Decision at paras. 133-142.

43. The Tribunal concluded that Ms. Olsen's repeated failure to confirm if Terry Wiebe could stay on the property if they had top surgery had an adverse impact on their tenancy.<sup>69</sup> This is a finding of fact by the Tribunal and entitled to deference.
44. The Tribunal reasoned that Terry Wiebe's questions about whether they could stay on the property if they got top surgery and Ms. Olsen's response was explicitly about and connected to the tenancy.<sup>70</sup> The Tribunal determined 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."<sup>71</sup>
45. The Tribunal highlighted that for Terry Wiebe, the stakes were high, both in terms of their housing and gender identity.<sup>72</sup> The Tribunal accepted that Ms. Olsen's comments about being uncomfortable with top surgery had a profound impact on Terry Wiebe such as feeling unsafe in their home, uncomfortable on the property, and fearful that Ms. Olsen would end their tenancy.<sup>73</sup>
46. Terry Wiebe understood Ms. Olsen's response to mean that Ms. Olsen did not support them getting top surgery and would be uncomfortable with continuing the tenancy if they went ahead with the procedure.<sup>74</sup> The Tribunal found it was reasonable for Terry Wiebe to infer from Ms. Olsen's reaction that she might end the tenancy if they proceeded with top surgery.<sup>75</sup> The Tribunal noted:

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<sup>69</sup> Decision at para. 130.

<sup>70</sup> Decision at para. 131.

<sup>71</sup> Decision at para. 134.

<sup>72</sup> Decision at para. 135.

<sup>73</sup> Decision at para. 175 & 183.

<sup>74</sup> Decision at para. 30.

<sup>75</sup> Decision at paras. 130 & 169.

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.<sup>76</sup>

47. The Tribunal noted that there was a power imbalance between the parties.<sup>77</sup> Ms. Olsen was in the position of a landlord and had the ability to control whether Terry Wiebe would be able to continue to reside there.<sup>78</sup> By the time Terry Wiebe was inquiring whether they could stay on the property if they got top surgery, the friendship between the parties had started to deteriorate.<sup>79</sup> The Tribunal accepted that Terry Wiebe asked if they could stay on the property if they underwent top surgery because they did not feel like they could rely on their friendship with Ms. Olsen and were uncertain about their ability to continue living in what they considered their long-term home.<sup>80</sup>

48. Ms. Olsen's response that she did not support surgery and did not want to be around it, as well as her lack thereof to confirm that the tenancy would not be in jeopardy if Terry Wiebe proceeded with top surgery, in the context of previous comments about mutilation and being fine as a lesbian negatively impacted Terry Wiebe's tenancy.<sup>81</sup> It is this context, as a whole, that contributed to Terry Wiebe's fear of housing insecurity and a reasonable desire for certainty.<sup>82</sup> It created a situation where Terry

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<sup>76</sup> Decision at para. 130.

<sup>77</sup> Decision at para. 133.

<sup>78</sup> Decision at para. 133.

<sup>79</sup> Decision at para. 134.

<sup>80</sup> Decision at para. 135.

<sup>81</sup> Decision at para. 137.

<sup>82</sup> Decision at para. 137.

Wiebe felt that if they proceeded with their transition, they would jeopardize their housing security. Terry Wiebe ultimately stopped hormone therapy, not due to any medical issues, but because they were concerned that Ms. Olsen would evict them if they continued hormone treatment.<sup>83</sup> The Tribunal accepted that Terry Wiebe stopped hormone treatment, at least in part, because of concerns about the future of their tenancy.<sup>84</sup> The Tribunal also remarked that it was reasonable for Terry Wiebe to believe that continuing hormone treatment could put their tenancy at risk.<sup>85</sup>

***Gender Identity or Expression Was a Factor in the Adverse Impact the Respondent Experienced***

49. Ms. Olsen alleges that the Tribunal's findings demonstrate that her discomfort with surgery was based on her family's history of breast cancer rather than discriminatory reasons related to gender identity or expression.<sup>86</sup> This is a mischaracterization of the Tribunal's findings. The Tribunal said they considered "that there was at least some non-discriminatory basis for Ms. Olsen's discomfort with top surgery" (emphasis added).<sup>87</sup>

50. The Decision goes on to state:

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

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<sup>83</sup> Decision at paras. 32 & 176.

<sup>84</sup> Decision at para. 178.

<sup>85</sup> Decision at para. 177.

<sup>86</sup> Petition at para. 36.

<sup>87</sup> Decision at para. 140.

referred to top surgery as “mutilation”. She made Terry Wiebe believe their tenancy was in danger if they got top surgery.<sup>88</sup>

51. The Tribunal concluded:

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.<sup>89</sup>

52. Section 2 of the *Code* explicitly states that intent is not required for a finding that the *Code* has been breached. Rather, the focus is on the impact of the conduct on the complainant. Terry Wiebe was not aware that some of Ms. Olsen’s discomfort was related to her family history of breast cancer.<sup>90</sup> Ms. Olsen had never expressed to Terry Wiebe that the reason she was uncomfortable and unsupportive of top surgery was because of her family history of breast cancer.<sup>91</sup>

53. Terry Wiebe led evidence and advanced arguments to persuade the Tribunal that gender identity or expression was a factor in the adverse impact they experienced. Terry Wiebe was not required to prove that Ms. Olsen intended to discriminate or that their protected characteristic was the sole or overriding factor in the adverse treatment they suffered.<sup>92</sup> Ms. Olsen’s intention does not negate the adverse impact that Terry Wiebe experienced. The Tribunal’s finding that gender identity or

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<sup>88</sup> Decision at para. 147.

<sup>89</sup> Decision at para. 170.

<sup>90</sup> Decision at para. 177.

<sup>91</sup> Decision at para. 28.

<sup>92</sup> *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 S.C.R. 789 at para. 52.

expression was a factor in the adverse impact Terry Wiebe experienced was both reasonable and correct and merits deference from this Court.

### ***Freedom of Expression under s. 2(b) of the Charter***

54. The Petition is an attempt to re-argue the case and go beyond the scope of the issues that were put before the Tribunal. It is well-established in the jurisprudence that a judicial review is not the appropriate mechanism to introduce new issues because it is not a re-hearing.<sup>93</sup>

55. Ms. Olsen was at liberty to raise *Charter* values before the Tribunal and did not do so. Ms. Olsen has not demonstrated any of the exceptional circumstances in which new issues may be considered at judicial review.

56. In *Conklin v. University of British Columbia* 2022 BCCA 333, the Court of Appeal noted that “the reviewing court must be sensitive to the fact that a tribunal’s decision and reasoning process will be informed by and responsive to the arguments before it” and that “it is generally considered that a judge should not find a decision to be patently unreasonable based on a submission the Tribunal never heard”.<sup>94</sup>

57. Recently, the Tribunal discussed freedom of expression in *Chilliwack Teachers’ Association v. Neufeld (No. 10)*, 2026 BCHRT 49 (“**Neufeld**”). In that case, the respondent had advanced arguments and addressed freedom of expression in their submissions.<sup>95</sup> The respondent also “occasionally alluded to his religion, [but] at no point in this complaint did he assert, or lead evidence to support, that his right to freedom of religion under s. 2(a) of the *Charter* was engaged.”<sup>96</sup> The Tribunal did not

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<sup>93</sup> *Vavilov* at para. 83.

<sup>94</sup> at para. 29.

<sup>95</sup> *Neufeld* at para. 21.

<sup>96</sup> *Neufeld* at para. 22.

consider whether their decision appropriately balanced the respondent's religious freedom on the basis that "it would not be appropriate to speculate about s. 2(a) of the *Charter* without a factual foundation or proper argument."<sup>97</sup>

58. Similarly, Ms. Olsen did not at any point before the Tribunal assert or lead evidence to support that her rights under s. 2(b) of the *Charter* was engaged. Ms. Olsen is now alleging that the Tribunal erred by failing to consider s. 2(b) *Charter* right to freedom of expression against the *Code*'s statutory objective but the Tribunal cannot be faulted for failing to analyze arguments that were never put before it. The record had not been developed to allow the Tribunal to assess the *Charter* argument. To consider Ms. Olsen's s. 2(b) rights, the Tribunal would have been forced to speculate because she did not provide any factual foundation, argument, or evidence.

59. Ms. Olsen has relied on *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 ("**Commission scolaire**"), *York Region*, and *Saint Mary's University v. Nova Scotia Human Rights Commission*, 2025 NSSC 107 ("**Saint Mary's University**") to argue that the Tribunal had a duty to consider and proportionately balance her freedom of expression. The present case is distinguishable from *Commission scolaire, York Region*, and *Saint Mary's University*.

60. *Commission scolaire* was about a discretionary decision to refuse admission of non-rights holder parents' children to minority language schools.<sup>98</sup> The s. 23 *Charter* value was clearly engaged and before the Minister. The Minister took s. 23 into account but erroneously opted to prioritize scarce government resources instead. The

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<sup>97</sup> *Neufeld* at para. 22.

<sup>98</sup> at para. 5.

Minister acknowledged in some of the decisions she made that she had to consider the purpose of s. 23, particularly its unique remedial nature, in exercising her discretion.<sup>99</sup>

61. By contrast, the Court found it was neither necessary nor appropriate to decide whether the appellants' right to use French before the Court of Appeal for the Northwest Territories or the right to be heard was infringed because the appellants raised a new ground of appeal under s. 19(1) of the *Charter* and s. 9(1) of the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1 (the "**OLA**").<sup>100</sup> The Supreme Court of Canada found that the appellants did not raise s. 19(1) of the *Charter* or s. 9(1) of the *OLA* arguments at the Court of Appeal for the Northwest Territories.<sup>101</sup> While *Commission scolaire* is otherwise distinguishable from the case at bar, they are alike in that in both a party attempted to raise a argument for the first time at the review stage. This Court should decline to entertain Ms. Olsen's s. 2(b) *Charter* argument, as it was not raised before the Tribunal and is advanced for the first time on judicial review, contrary to the principles of procedural fairness and the proper role of a reviewing court.

62. *York Region* does not stand for the proposition that any failure to consider *Charter* values is a fatal error. The duty arises only where a *Charter* right is clearly implicated. In *York Region*, s. 8 of the *Charter* was implicated. While the parties had not sought *Charter* remedies, they had argued s. 8 *Charter* jurisprudence.<sup>102</sup> The arbitrator considered whether there was a reasonable expectation of privacy and s. 8 *Charter*

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<sup>99</sup> *Commission scolaire* at para. 78.

<sup>100</sup> *Commission scolaire* at para. 104.

<sup>101</sup> *Commission scolaire* at para. 109.

<sup>102</sup> *York Region* at paras. 109 & 117.

principles and jurisprudence<sup>103</sup> but misunderstood the nature of the s. 8 right.<sup>104</sup> In this case, *Charter* issues were never raised before the Tribunal, nor was any such issue apparent on the record.

63. In *Saint Mary's University*, one of the respondents raised freedom of expression and argued that the complaint should be dismissed on the basis that it interfered with the free expression of opinion.<sup>105</sup> Although that argument was before the decision-maker, it was not addressed.<sup>106</sup> In the present case, freedom of expression was never raised before the Tribunal and Ms. Olsen now seeks to advance it for the first time on judicial review.

64. The Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association* 2011 SCC 61 ("**Alberta Teachers' Association**") confirmed that parties do not have the right to require reviewing courts to consider issues not previously raised.<sup>107</sup> Courts have the discretion to not consider an issue that was raised for the first time at judicial review.<sup>108</sup> The SCC stated that this discretion should not be exercised in favour of an applicant on judicial review where the issue could have been but was not raised before the tribunal.<sup>109</sup> The SCC cautioned:

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<sup>103</sup> *York Region* at paras. 18 & 117.

<sup>104</sup> *York Region* at para. 3.

<sup>105</sup> at paras. 42 & 72.

<sup>106</sup> *Saint Mary's University* at para. 72.

<sup>107</sup> at para. 22.

<sup>108</sup> *Alberta Teachers' Association* at para. 22.

<sup>109</sup> *Alberta Teachers' Association* at para. 23.

raising an issue for the first time on judicial review may unfairly prejudice the opposing party and may deny the court the adequate evidentiary record required to consider the issue.<sup>110</sup>

Care must be taken not to give parties an opportunity for a second hearing before a tribunal as a result of their failure to raise at the first hearing all of the issues they ought to have raised.<sup>111</sup>

65. In this case, considering the s. 2(b) *Charter* argument for the first time at judicial review will be prejudicial to Terry Wiebe and the Tribunal as they did not get a chance to hear and consider the argument and there is no adequate evidentiary record to consider the issue.

66. In the alternative, the Supreme Court of Canada has recognized that administrative decision-makers, when exercising discretionary powers under their enabling statutes, are typically well-positioned to balance *Charter* protections with the statutory objectives at issue.<sup>112</sup> They are generally best suited to assess how these competing considerations should be weighed in light of the facts.<sup>113</sup> As a result, reviewing courts should show deference when evaluating whether the decision achieves a proportionate balance. The Court also recognizes that there may be multiple reasonable ways to strike this balance between *Charter* protections and

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<sup>110</sup> *Alberta Teachers' Association* at para. 26.

<sup>111</sup> *Alberta Teachers' Association* at para. 55.

<sup>112</sup> *Doré v. Barreau du Québec* 2012 SCC 12 ("**Doré**") at para. 54; *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 ("**Loyola**") at para. 42.

<sup>113</sup> *Doré* at para. 54.

statutory objectives.<sup>114</sup> A decision will be considered reasonable so long as it “falls within a range of possible, acceptable outcomes.”<sup>115</sup>

67. In this case, the Tribunal did interpret and apply the statutory objectives of the *Code* in a manner that is consistent and balanced with the *Charter*. Ms. Olsen’s right to freedom of expression under s. 2(b) of the *Charter* is not absolute.<sup>116</sup> The freedom of expression has limits, particularly when the expression causes harm or undermines the rights and dignity of vulnerable groups, such as transgender individuals.

68. The Tribunal carefully considered Ms. Olsen’s statements about Terry Wiebe changing their gender. The Tribunal acknowledged that certain comments—such as referring to top surgery as “mutilation” and suggesting that Terry Wiebe was “fine as a lesbian”— could be characterized as anti-trans and transphobic.<sup>117</sup> However, the Tribunal concluded that these statements did not, in themselves, constitute discrimination under the *Code*. In doing so, the Tribunal exercised appropriate restraint, ensuring that the statutory prohibition against discrimination was not applied in a manner that unduly limits expressive freedom. This reflects a proportionate application of the Tribunal’s mandate, consistent with the principles underlying the Doré/Loyola framework.

69. Contrary to Ms. Olsen’s submission, this is not a case in which the Tribunal failed to consider freedom of expression; rather, it demonstrates that the Tribunal balanced

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<sup>114</sup> *Loyola* at para. 41.

<sup>115</sup> *Doré* at para. 56.

<sup>116</sup> *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 2.

<sup>117</sup> Decision at paras. 118, 121 & 147.

expressive interests against the *Code*'s objectives and drew a principled line between offensive expression and discriminatory conduct.

### ***Disproportionate Damages***

70. Ms. Olsen alleges that the Tribunal erred in determining the damages to dignity in the amount of \$10,000. Ms. Olsen argues that such a penalty is disproportionate and does not balance the fulfillment of the statutory purpose of the *Code* against her s. 2(b) *Charter* right.

71. The amount awarded for injury to dignity, feelings, and self-respect is a discretionary matter, subject to the patent unreasonableness standard established for discretionary matters by the *ATA* s. 59(3) and (4).

72. The Court of Appeal in *Kelly* overturned the chambers judge's finding that an award for injury to dignity by the Tribunal was patently unreasonable.<sup>118</sup> In *Kelly*, the Tribunal made an award for injury to dignity that was twice as large as any previous award under this category.<sup>119</sup> In overturning the chambers judge the court of appeal made clear that a judicial review of these awards is not a quantum of damages appeal and the previous range of awards plays a diminished role.<sup>120</sup> The Court of Appeal reiterated that on judicial review courts must not reweigh the evidence before the Tribunal or second guess the Tribunal's exercise of discretion.<sup>121</sup>

73. The focus of an award for injury to dignity is the impact of the discrimination on the complainant. In this case, the Tribunal found that Ms. Olsen discriminated against

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<sup>118</sup> at para. 64.

<sup>119</sup> at para. 59.

<sup>120</sup> *Kelly* at para. 60.

<sup>121</sup> *Kelly* at para. 62.

Terry Wiebe when she repeatedly refused to reassure them that their tenancy would be safe if they proceeded with surgery. This sent a message to Terry Wiebe that they could lose their home if they took further steps to change their gender.<sup>122</sup> In this context, Terry Wiebe was vulnerable to discrimination in two intersecting ways: 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 marginalize and discriminate against transgender people.<sup>123</sup> This discrimination had a profound impact on Terry Wiebe where they felt unsafe in their home, fearful that Ms. Olsen would end their tenancy, and stopped hormone treatment.<sup>124</sup> Further, the discrimination had an enduring impact on Terry Wiebe.<sup>125</sup>

74. The purpose of the award is to provide redress for the harm that has been done through the discrimination. This is an inherently imperfect process. The Tribunal considered the impact and social context of the discrimination in this case and relied on its expertise and discretion to find that the award should be \$10,000. There was evidence on which to base this exercise of discretion and the Court should not interfere with it. It should be noted, that unlike *Kelly*, this case did not even involve the highest ever award of this type. In exercising its discretion, the Tribunal reviewed previous awards it made on similar issues ranging from \$2,500 to \$40,000.<sup>126</sup> Thus, this award of \$10,000 clearly falls within the established range.

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<sup>122</sup> Decision at para. 170.

<sup>123</sup> Decision at paras. 171 & 174.

<sup>124</sup> Decision at paras. 176-178 & 183.

<sup>125</sup> Decision at para. 179.

<sup>126</sup> Decision at para. 185 & 190.

75. Ms. Olsen has not demonstrated that the Tribunal interpreted and applied the statutory objectives of the *Code* in a manner that is inconsistent and unbalanced with the *Charter*, let alone demonstrated the patent unreasonableness required to meet the high standard of review for a discretionary decision of the Tribunal.

76. In the alternative, if this Court applies the *Doré/Loyola* framework, the damages to dignity in the amount of \$10,000 is owed deference because it falls within a range of reasonable outcomes.

### **Remedy**

77. The Tribunal's Decision was thorough and followed an extensive four-day hearing before a three-member panel. Ms. Olsen has not demonstrated any error in the Decision. This Court should, as a general rule, respect the legislature's intention to entrust decisions of this nature to the Tribunal.<sup>127</sup>

78. The Petition should be dismissed with costs to Terry Wiebe.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27<sup>th</sup> DAY OF MAY, 2026.

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Counsel for Theresa (Terry) Wiebe

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<sup>127</sup> *Vavilov* at para. 142.

No. ABB-S-S-07078  
Abbotsford Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*, R.S.B.C. 1996, c. 241

BETWEEN:

KIRSTEN CHASE OLSEN

PETITIONER

AND:

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL -and- THERESA (TERRY) WIEBE

RESPONDENTS

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**WRITTEN ARGUMENT OF THE RESPONDENT**  
**BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL**

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## OVERVIEW

1. This judicial review arises from a final decision of the British Columbia Human Rights Tribunal [**Tribunal**] indexed as *Wiebe v. Olsen*, 2025 BCHRT 14. The Tribunal participates pursuant to s. 15 of the *Judicial Review Procedure Act*, RSBC 1996, c. 241 [**JRPA**]. It takes no position on the petition's merits. The Tribunal appears primarily to make submission on standard of review and relevant principles of administrative and human rights law.

Affidavit #1 of Kirsten Olsen made March 21, 2025, Ex. C [**Decision**]

2. In the Decision, the Tribunal found that Terry Wiebe's complaint against Ms. Olsen was justified, in part. The Tribunal found Ms. Olsen discriminated against Terry Wiebe based on gender identity and expression in the area of tenancy, contrary to s. 10 of the *Human Rights Code*, RSBC 1996, c. 210 [**Code**].
3. Specifically, in the Decision the Tribunal found that between April 2017 and June 2018 Terry Wiebe asked Ms. Olsen a number of times if they could stay on the property even if they had surgery to remove their breasts, referred to by the parties and in the Decision as top surgery. The Tribunal found that Ms. Olsen did not confirm they could stay and only said she would be uncomfortable with it or she would not support it: paras. 40-41. The petition refers to Ms. Olsen's responses as the "Impugned Speech".
4. The Tribunal concluded Ms. Olsen's responses adversely affected the tenancy by making Terry Wiebe feel insecure in their living space, and that adverse impact was connected to Terry Wiebe's gender identity and expression: paras. 129-143. Having found Ms. Olsen breached the *Code*, it ordered remedies including compensation for injury to dignity, feelings, and self-respect under s. 37(2)(d)(iii): paras. 166-191.
5. The Tribunal dismissed other parts of the complaint. It found other of Ms. Olsen's comments relied on by Terry Wiebe, were not sufficiently connected to the tenancy (rather they were connected to the parties' personal relationship): paras. 118-128. In addition, the Tribunal found Terry Wiebe's gender identity or expression was not a factor

in Ms. Olsen terminating the tenancy: paras. 145-158. The Tribunal dismissed those parts of the complaint.

6. The petition alleges the Tribunal erred in finding: Ms. Olsen and Terry Wiebe had a tenancy relationship; that Terry Wiebe was adversely impacted in the tenancy and that gender identity or expression was a factor in that adverse impact, and; that the Tribunal erred by failing to proportionately balance Ms. Olsen's *Charter* right to freedom of expression with the *Code's* purposes in determining whether Ms. Olsen breached the *Code* and, in the alternative, ordering \$10,000 for injury to dignity, feelings, and self-respect.

Petition, Part 3 at para. 17

7. The parties do not agree on the standard of review applicable to the alleged errors. Ms. Olsen appears to argue that the correctness standard applies to all the alleged errors. Terry Wiebe says the reasonableness standard applies to all the alleged errors but for the alleged error on remedy, which they say is reviewable on the patent unreasonableness standard. The Tribunal agrees with Terry Wiebe.

Petitioner's SOR Submissions at para. 14

T. Wiebe's Petition Response, Part 3 at paras. 4-6

Tribunal's Petition Response, Part 3 at paras. 28-30

8. A preliminary issue for this Court is whether to entertain new arguments on judicial review. Several of Ms. Olsen's arguments concern Ms. Olsen's right to freedom of expression under s.2(b) of the *Charter of Rights and Freedoms* [**Charter**].

Petition, Part 3 at paras. 43-45

Petitioner's Charter Submissions

9. As the Tribunal understands it, Ms. Olsen does not dispute that she did not make these arguments before the Tribunal but says she did not have to in order for this Court to consider them on judicial review. Terry Wiebe says this Court should not hear the new

arguments because there are no exceptional circumstances warranting the departure from the general rule. Therefore, this Court will need to decide whether this is an appropriate case to exercise its discretion and allow new arguments to be made on judicial review.

10. The Tribunal's written submissions refer and rely on both the pleadings and the draft written submissions of the parties. Ms. Olsen circulated draft written submissions on her *Charter* arguments and on the standard of review, on March 27 and May 22, 2026, respectively. Terry Wiebe circulated draft written submissions on the Ms. Olsen's *Charter* arguments on April 24, 2026.

Affidavit #1 of Brianne Moore made May 26, 2026 [**Moore Affidavit**], Exhibit C [**Petitioner's Charter Submissions**], Exhibit D [**T. Wiebe's Charter Submissions**], and Exhibit E [**Petitioner's SOR Submissions**]

## **BACKGROUND AND SUMMARY OF DECISION**

11. The Tribunal is established under s. 31 of the *Code*.
12. The Tribunal heard the complaint over four days from June 17-20, 2024. Terry Wiebe gave evidence on their own behalf and called two other witnesses. Ms. Olsen also testified on her own behalf. She called four additional witnesses. The parties made oral arguments at the end of the hearing.

Decision at paras. 6, 11-12

### **Summary of Decision**

13. The Decision begins by introducing the parties and the complaint. It says Terry Wiebe is transgender and uses they/them pronouns. It explains that Terry Wiebe lived in a motorhome on a property owned and occupied by Ms. Olsen from 2014 to 2019. It acknowledges that the parties were good friends, at least until 2017: para. 2.
14. Following the introduction and canvassing of the evidence, the Tribunal set out the legal framework for discrimination under s. 10 of the *Code*, writing:

[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 [**Moore**] at para 33.

15. The Tribunal summarizes the findings at issue in the Decision, as follows.

### ***Tenancy Relationship***

16. The Tribunal said that the *Code* does not define what makes a tenancy and that the term is broadly interpreted to ensure s. 10 achieves its broad public purpose in relation to housing: para. 93. It also said, whether there is a tenancy under other legislation is not determinative of whether there is a tenancy under the *Code*: para. 94.

17. The Tribunal noted that this Court in *McCulloch v. British Columbia (Human Rights Tribunal)*, 2019 BCSC 624 [**McCulloch**] at para. 130, said that the Tribunal must conduct a contextual analysis to decide if s. 10 applies, and set out some factors the Tribunal should consider. The Tribunal said those factors included the respondent's control over the complainant's living space, if the conduct occurred there, and whether the respondent's conduct negatively affected the complainant's tenancy or living space. The Tribunal referred to its own case law for other relevant factors, including whether there was

payment of rent, a pre-agreed term, or some degree of permanence, and whether the parties intended to create a tenancy relationship: paras. 95-96

18. The Tribunal considered the factors in the Decision, finding that:
  - a. Terry Wiebe made payments in return for keeping their motorhome on the property, in money or in work at Ms. Olsen's business, which supported a finding of a tenancy: para. 98;
  - b. For most of the time Terry Wiebe lived on Ms. Olsen's property, the parties intended it to be for an indefinite term with a degree of permanency, supporting a finding of a tenancy: paras. 99-102;
  - c. It was more likely than not that Ms. Olsen described Terry Wiebe as her tenant; on its own, this was not determinative but was relevant to whether the parties intended to form a tenancy: paras. 103-110;
  - d. On the *McCulloch* factors, Ms. Olsen did not have control over the interior of Terry Wiebe's living space but did have control over the land where it was parked. Ms. Olsen asserted her right to control when she asked Terry Wiebe to leave. The fundamental power imbalance between the parties made Terry Wiebe vulnerable to the effects of discriminatory conduct by Ms. Olsen: paras. 111-113.
19. The Tribunal concluded that the relationship was a tenancy within the meaning of the *Code*: para. 115. It said:

[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.

***Adverse impact in tenancy based on gender identity***

20. As noted above, the Tribunal found that Terry Wiebe did not establish two aspects of their complaint.
21. First, certain of Ms. Olsen's comments to Terry Wiebe in relation to their gender identity – specifically, that Terry Wiebe was “fine as a lesbian” and that top surgery was “mutilation” – were not sufficiently connected to the tenancy context (but were connected to the parties' personal relationship) and therefore were not discrimination under the *Code*: paras. 118-128.
22. Second, Terry Wiebe's gender identity was not a factor in Ms. Olsen terminating the tenancy: paras. 145-158. The Tribunal accepted that there was some basis in Ms. Olsen's conduct to infer that her decision to evict Terry Wiebe was connected to their gender identity: para. 147. However, the Tribunal said, Ms. Olsen had rebutted the inference by providing evidence that she had a non-discriminatory explanation for the decision to evict: paras. 147-148.
23. However, the Tribunal found that Ms. Olsen's repeated refusal, when asked, to reassure Terry Wiebe between April 2017 and June 2018 that they could stay on the property even if they had top surgery adversely affected the tenancy by making Terry Wiebe feel insecure in their living space: paras. 129-143. In reaching this conclusion, the Tribunal expressly considered: 1. the relationship between the parties (paras. 133-134); 2. the context of the comments and lack of an apology (paras. 135-138); 3. the egregiousness or virulence of the comments (paras. 139-141), and; 4. the historical discrimination against transgender people (paras. 142).

### ***Remedy***

24. The Tribunal ordered Ms. Olsen to pay Terry Wiebe \$10,000 compensation for injury to dignity, feelings, and self-respect under s. 37(2)(d)(iii) of the *Code*: para. 194. The Tribunal said Ms. Olsen did not make any arguments about the appropriate amount of an injury to dignity award: para. 167.
25. The Tribunal considered:
  - a. 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: paras. 169-170;
  - b. The social context of the discrimination, including the imbalance of power with Ms. Olsen in the context of the tenancy relationship and that society continues to marginalise and discriminate against transgender people: paras. 171-174;
  - c. The discrimination had a profound impact on Terry Wiebe who was fearful that Ms. Olsen would end their tenancy and that this concern was a factor in their decision to stop hormone treatment during the tenancy: paras. 175-183;
  - d. The case law, though the Tribunal is not bound by a “range” of appropriate awards: paras. 184-191.

### **ISSUES**

26. The Tribunal identifies the issues before the Court but does not take a position on them, except the standard of review.
27. There are three preliminary issues raised by the petition:
  - a. Should the Court consider new arguments or issues raised for the first time on judicial review?

- b. Should the Court extend the time to file the petition?
  - c. What material is admissible on judicial review?
28. The principal issues on the substance of the petition are:
- a. What is the standard of review?
  - b. Is the finding that there was a tenancy relationship unreasonable?
  - c. Is the finding of discrimination unreasonable?
  - d. Is the compensation order patently unreasonable?
  - e. If the Court's intervention is warranted, what relief is available?

## **SUBMISSIONS**

### **A. Role of the Tribunal**

29. In most judicial review applications where the Tribunal participates, it has an explanatory role respecting the record, makes submissions regarding the Court's authority, the standard of review, the Tribunal's authority in relation to the decision under review, and the available relief should the Court determine that the Tribunal erred.
30. In this application, where both parties are represented, the Tribunal addresses the role of the Court, the record on judicial review, the standard of review, the Tribunal's authority and the specialized legal context of the Decision, preliminary issues (primarily principles related to new arguments on judicial review), and the relief available on judicial review.
31. As noted above, the Tribunal takes no position on the merits of the petition.

### **B. Role of the Court**

32. The court's role on judicial review is to assess, on the applicable standard of review, whether a tribunal has made a reviewable error justifying the court's intervention.

33. The court adopts a posture of restraint on judicial review. Relief on judicial review is discretionary. The court must determine whether its intervention is warranted having regard to the applicable principles, including the principle of restraint. The court does not sit as an appellate court, does not re-try the matter, and does not review the wisdom of the tribunal's decision. The court cannot re-weigh the evidence, make findings of credibility or substitute its view of the merits for that of the tribunal. The court's role is limited to determining, based on a reasons first approach, whether the tribunal has acted, and made its decision, within its statutory authority.

*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [**Vavilov**] at paras. 13 and 24

*Kinexus Bioinformatics Corp. v. Asad*, 2010 BCSC 33 [**Kinexus**] at paras. 12-14

### **C. The Record on Judicial Review & Admissibility of Extra-Record Statements**

34. Judicial review is based on the record of the materials before the administrative tribunal when it made its decision. Other evidence is admissible only in limited circumstances, where its admission is consistent with the court's supervisory role. The court does not consider the matter afresh. Rather, the court assesses, on the applicable standard of review, whether a tribunal has made a reviewable error justifying the court's intervention.

*Kinexus* at paras. 16-20

*Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 [**Air Canada**] at paras. 32-44

35. Reviewing courts should not admit extrinsic evidence if the alleged errors can be addressed on the record or if its admission invites the court to re-weigh the evidence heard by the tribunal.

*Kinexus* at para. 20

36. Below the Tribunal identifies the parts of the record of proceeding that are before the Court, evidence that is not part of the Tribunal's record but is before the Court, and parts of the record that are not before the Court.

37. In this case, the petitioner has filed Affidavit #1 of Kirsten Olsen made March 21, 2025 [**Olsen Affidavit**]. The Olsen Affidavit attaches:
- a. Terry Wiebe’s complaint as Exhibit A;
  - b. Ms. Olsen’s response to the complaint as Exhibit B; and
  - c. The Decision as Exhibit C.
38. The body of the Olsen Affidavit at paragraphs 2-12, sets out a factual narrative. That narrative is not part of the record of the proceeding. The petition takes issue only with the substance of the Decision and material outside of the record is inadmissible.
39. In *Air Canada*, our Court of Appeal found that it was an error for the chambers judge to admit affidavit evidence that was, as the Court of Appeal put it, “an attempt to shore up the record by placing information before the court that the tribunal did not have the opportunity to consider”: para. 43.
40. Other admissible material would include the documents produced in evidence at the hearing of the complaint and, if a party were to order it, the transcript of the oral evidence.
41. By letter dated May 15, 2025, the Tribunal asked the other parties to indicate whether other parts of the record needed to be filed with the Court. The Tribunal said it did not intend to file an affidavit unless one or both of the parties indicated they needed to rely on exhibits entered into evidence before the Tribunal. Neither party indicated they wanted the evidence adduced at the hearing exhibited to an affidavit filed by the Tribunal.
- Moore Affidavit, Ex. A
42. Neither Ms. Olsen or Terry Wiebe sought to order a transcript of the hearing before the Tribunal. Therefore, it is not before the Court.

#### **D. Standard of Review – General Principles**

43. There is no dispute that s. 59 of the *ATA* establishes the standards of review applicable to Tribunal decisions.

*Code*, s. 32(q)

Petition, Part 3 at para. 2.

Wiebe's Response to Petition, Part 3 at para. 8

44. Section 59 provides:

59 (1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

45. Ms. Olsen's position is that the standard of review is correctness because, she says, the alleged errors are all mixed fact and law.

Petitioner's SOR Submissions at paras. 14-15

46. With one exception, Terry Wiebe says the standard of review applicable to all the alleged errors is reasonableness pursuant to s. 59(2) of the ATA. Terry Wiebe says the alleged error on remedy is reviewable on the patent unreasonableness standard pursuant to s. 59(3)-(4) of the ATA. The Tribunal agrees with Terry Wiebe.

Wiebe's Response to Petition, Part 3 at paras. 4-5

Tribunal's Response to Petition, Part 3 at paras. 22(d)-(e) and 29

47. The standard of review turns on the nature of the question.

***Identifying the Nature of the Question***

48. The petitioner says the key question on standard of review is whether the alleged errors are errors of fact or errors of mixed fact and law. The Tribunal does not agree that this is the key question. The Tribunal submits that the key question on standard of review is whether the petitioner has identified a readily extricable questions of law. If she has, and if the Tribunal made an error, then the key question is whether the error was material to the Decision.

Petitioner's SOR Submissions

49. As explained below, if the petitioner has identified a readily extricable question of law regarding the legal test for what falls within the scope of s. 10, or the test for establishing adverse impact or nexus, or determining the amount of injury to dignity a complainant should be awarded, the Court applies the correctness standard to those questions. Then, if there is an error, assesses whether the error renders the associated finding of fact unreasonable or the Tribunal's exercise of discretion on remedy, patently unreasonable. Absent an extricable question of law, the only standard of review is reasonableness on the merits of the Decision and patent unreasonableness on remedy.
50. The question for the Court therefore is whether the petition identifies readily extricable errors of law or alleges only that the Tribunal erred in applying the law to the evidence before it, which, as the Tribunal explains below, attracts deference.

51. The Court of Appeal has said that “questions do not always fall neatly into the categories set out in s. 59(1).” The Court has cautioned against an automatic application of the correctness standard.

*J.J. v. School District 43 (Coquitlam)*, 2013 BCCA 67 [**J.J.**] at paras. 23 and 26-28

*Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 [**VANDU**] at paras. 46-47

52. Rather, the Court has provided guidance about how to ensure the level of deference required by s. 59 is maintained on judicial review.
53. First, the identification of the correct legal test to establish discrimination is a question of law, reviewed on the correctness standard.

*VANDU* at para. 48

54. Second, “The question of whether facts have been established that meet the identified legal test, however, involves extricable issues of fact. The appropriate standard of review is that set out in s. 59(2). The Tribunal is entitled to deference on that issue.”

*VANDU* at para. 49

55. If there is a readily extricable question of law – that is, the legal test to be applied by the Tribunal – the standard of review is correctness: *ATA*, s. 59(1). But the inquiry does not end there.

*Morgan-Hung v. British Columbia (Human Rights Tribunal)*, 2011 BCCA 122 [**Morgan-Hung**] at para. 28

56. If the petitioner has identified an extricable question of law underlying the Tribunal’s finding that there was a tenancy relationship between the parties, the test for discrimination set out in *Moore*, or determining the amount of injury to dignity a complainant should be awarded, then the Court undertakes a two-step analysis. First, the extricable legal question is reviewed on the correctness standard. If the Court finds an error, then it must determine whether the error renders the finding unreasonable

because “there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable” or, in relation to the injury to dignity award, patently unreasonable as defined by s.59(4) of the ATA.

*ATA, s. 59(2)*

*The Parent obo the Child v. The School District, 2020 BCCA 333 at para. 28*

*Morgan-Hung at paras. 30-31*

***Findings of Fact – Reasonableness Review***

57. The Tribunal is owed deference on findings of fact. Under s. 59(2) a petitioner must show that there is no evidence to support the impugned finding of fact or that the finding is otherwise unreasonable.

*VANDU at para. 49*

58. As noted above, the court cannot weigh and evaluate the evidence. Rather, the court must “confine its review to the initial question of whether there is some evidence capable of supporting the decision”. The fact that the reviewing court may take another view of the evidence and/or the factual inferences to be drawn from it does not justify judicial review. The Supreme Court of Canada has said that it is trite law that it is for the administrative decision maker to assess and evaluate the evidence before it, and that absent exceptional circumstances, a reviewing court will not interfere with its factual findings.

*Kinexus at para. 28*

*Stewart v. Elk Valley Coal Corp., 2017 SCC 30 [Stewart] at para. 41*

*Vavilov at para. 125*

59. The question of whether facts have been established that meet the identified legal test for discrimination is reviewable on a reasonableness standard (s. 59(2)), and the Tribunal is entitled to deference.

VANDU at para. 9 and 48-49

60. Both our Court of Appeal and the Supreme Court of Canada have said that the question of whether the evidence establishes a connection between the adverse treatment and prohibited grounds of discrimination is essentially one of fact that attracts deference and is generally reviewed on a reasonableness standard.

VANDU at para. 81 (citing *Forsyth v. Coast Mountain Bus Co.*, 2013 BCCA 257 [**Forsyth**], and *Victoria Gardens* at para. 13)

*Stewart* at paras. 5, 20 and 22

*Nanaimo (City) v. Mema*, 2026 BCCA 203 at para. 42

***Application of the Law to the Facts – Reasonableness Review***

61. The petitioner argues that that the Tribunal misapprehended the legal tests or applied them incorrectly. It is not clear which legal tests the petitioner says the Tribunal misapprehend and which she says it misapplied. As explained further below in the section “Does the Petitioner Identify an Extrinsic Error of Law”, it appears to the Tribunal like the alleged errors all go to the application of the law to the facts. This is an important distinction when determining the standard of review because the Court of Appeal has said the application of law to the facts attracts deference.

Petitioner’s SOR Submissions at para. 15

62. The Tribunal says that the standard of review for applications of law to the facts is reasonableness vis-à-vis the test for discrimination under *Moore* and for what constitutes a tenancy for the purposes of the *Code*. Courts in British Columbia have drawn a distinction between “the identification of the correct legal test” and the application of the correct legal test to the facts (or put another way, “whether facts have been established that meet the identified legal test”). The former is an issue of law, reviewable on the correctness standard. The latter is entitled to deference.

VANDU at paras. 48-49

*Chen v. Surrey (City)*, 2015 BCCA 57 at para. 29

*Stewart* at para. 22

63. Similarly, our Court of Appeal has said that if the issues of fact and law are “inextricably intertwined”, then a deferential standard of review applies.

*Morgan-Hung* at para. 26

*J.J.* at para. 28

#### **E. The Methodology of Judicial Review Under the Reasonableness Standard**

64. The Tribunal is entitled to a contextual review of its decisions on the principle of curial deference. Courts must take a reasons-first approach, and seek to understand how a tribunal reached its conclusion, giving a holistic and contextual reading of the decision.

*Vavilov* at paras. 75, 83, 91-94, 97, and 100

65. The burden is on the petitioner to demonstrate that the Court’s intervention is warranted.

*Vavilov* at paras. 75 and 100

66. The Court presumes that the Tribunal has considered all the argument and evidence before it, even if not all are recited in the reasons. It is well established that a decision-maker is not required to refer to all the evidence before it in their written reasons. The fact that written reasons do not include all the details a reviewing judge would have preferred is not on its own a basis to set aside a decision. However, a failure to grapple with key issues or central arguments raised by the parties may result in an unreasonable decision.

*C.S. v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2017 BCSC 1268 [C.S.] at paras. 216-219, appeal dismissed 2018 BCCA 264; leave denied 2019 CanLII 23870 (SCC)

*Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [**Newfoundland Nurses**] at para. 16

*Vavilov* at paras. 91 and 128

67. The Court of Appeal has said that the Tribunal is a specialized tribunal and that it is assumed to know the law and must be taken to apply the appropriate legal test.

*VANDU* at para. 68

*British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite*, 2014 BCCA 220 [*Mzite*] at para. 49

68. Justice Gomery, for this Court (as he then was), recently reiterated that the Court should not assume that the Tribunal is unaware of trite propositions of human rights law or propositions that are well understood by practitioners of human rights law.

*Skerry v. British Columbia (Human Rights Tribunal)*, 2023 BCSC 1819 [*Skerry*] at paras. 27 and 29, appeal dismissed 2024 BCCA 345

69. Reviewing courts generally approach human rights tribunals' decisions with "considerable deference". As the Supreme Court of Canada said:

Reviewing courts generally approach the decisions of tribunals under human rights statutes with considerable deference. It is the tribunal's task to evaluate the evidence, find the facts and draw reasonable inferences from the facts. And it is the tribunal's task to interpret the statute in ways that make practical and legal sense in the case before it, guided by applicable jurisprudence. Reviewing courts tread lightly in these areas.

*Stewart* at para. 20

70. Accordingly, the petitioner bears the onus of displacing the presumption of regularity on the part of the Tribunal. The reviewing court must read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered, which includes the evidence before the decision maker, the submission of the parties, and past decisions of the Tribunal.

*Vavilov* at paras. 93-94 and 97

71. The Supreme Court of Canada has confirmed that the reviewing court "must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable." Our Court of

Appeal has similarly confirmed that not every element of a tribunal's reasoning must independently pass a test for reasonableness. The question is whether the reasons, taken as a whole, are tenable to support the decision.

*Vavilov* at paras. 100 and 98

*Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at paras. 55-56 (citing *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at para. 56)

72. Finally, in considering the parties' submissions on judicial review, the Court of Appeal has said that it is for the Tribunal to assess, at first instance, the theory of the case advanced before it, not for the courts to consider the record in light of a theory advanced on judicial review. As such, courts generally do not consider issues or arguments not made at first instance to the tribunal. The Supreme Court of Canada has said that care must be taken not to give parties an opportunity for a second hearing before a tribunal as a result of their failure to raise at the first hearing all of the issues they ought to have raised.

*Forsyth* at paras. 49-50

*Conklin v. University of British Columbia*, 2022 BCCA 333 [**Conklin**] at para. 29

*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 [**Alberta Teachers**] at paras. 23 and 55

#### **F. The Methodology of Judicial Review Under the Patent Unreasonableness Standard**

73. The standard of review for the compensation order made for injury to dignity, feelings, and self respect, is patent unreasonableness per s. 59(3) of the *ATA*. The Court of Appeal has confirmed that awarding damages for injury to dignity is a discretionary remedy requiring the most deferential standard of review.

*Silver Campsites Ltd. v. James*, 2013 BCCA 292 at para. 28

74. Section 59(4) states that a discretionary decision is patently unreasonable only if the discretion is exercised: arbitrarily or in bad faith; for an improper purpose; based entirely

or predominantly on irrelevant factors; or fails to take statutory requirements into account.

75. The patent unreasonableness standard accords a “very high level of deference to the decision-maker”. This Court has said it must be at least as methodologically deferential as the reasonableness standard at common law.

*Northwest Plastics Ltd v. Bellin*, 2025 BCSC 1215 [**Northwest Plastics**] at para. 26

76. In *Northwest Plastics* this Court summarized the threshold that must be reached to find a decision patently unreasonable. A patently unreasonable decision is “clearly irrational”, “evidently not in accordance with reason”, “so flawed that no amount of curial deference can justify letting it stand”, “openly, clearly, evidently unreasonable”, and that “almost border[s] on the absurd”.

*Northwest Plastics* at para. 27, citing *Francescutti v. Vancouver (City)*, 2017 BCCA 242 at para. 45

77. The Court of Appeal has said judicial review of the Tribunal’s decision to award compensation for injury to dignity is “not to be treated as though it were a quantum appeal in a personal injury case” and it is for the Tribunal “to measure the weight of” the impact of the discrimination on the complainant.

*University of British Columbia v. Kelly*, 2016 BCCA 271 at paras. 59-63

#### **G. Does the Petitioner Identify an Extrinsic Error of Law?**

78. The petitioner has not specified what legal tests she says the Tribunal misapprehended (as opposed to misapplied). Therefore, it is difficult to provide submissions on whether she has identified an extricable question of law. In this section the Tribunal identifies the alleged errors, as it understands them, in relation each aspect of the Decision on the merits. The Tribunal does so for the purpose of assisting this Court to identify the standard of review.

79. The Tribunal does not address the alleged error on compensation for injury to dignity in this section but relies on its submissions on the new *Charter* arguments below.

### ***Tenancy***

80. The Tribunal said “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.” It noted that *McCulloch* set out “some factors the Tribunal should consider” and then set out other relevant factors from its own case law.

Decision at paras. 95-96

81. The petition does not take issue with the Decision’s statement of the law. The petition alleges two errors in the Decision related to the Tribunal’s finding that a tenancy existed between the parties for the purposes of s. 10 of the *Code*. First, the petition says the Tribunal “failed to consider whether the employment relationship had ended and, along with it, [Terry Wiebe’s] legal license to reside on the property.” Second, the petition says, in the alternative, the Tribunal erred in finding a tenancy “according to the *McCulloch* factors”. The latter alleged error appears to be based on the Tribunal’s assessment of the evidence about the rent paid by Terry Wiebe and the circumstances that gave rise to it and the Tribunal’s assessment of the control Ms. Olsen had over the property on which Terry Wiebe’s motorhome was parked.

Petition, Part 3 at paras. 21 and 23

82. Neither argument identifies an extricable question of law. The first error goes to whether the Tribunal failed to meaningfully grapple with key issues or central arguments raised by Ms. Olsen. This is a question reviewable on the standard of reasonableness. She bears the burden of demonstrating that she argued before the Tribunal that Terry Wiebe resided on the property by virtue of their employment relationship, that their license to reside ended with their employment, and that this was a central argument the Tribunal failed to grapple with.

*Vavilov* at para. 128

83. The second error appears to go to the Tribunal's assessment of the evidence and the Tribunal's finding of fact that the parties had a tenancy relationship under s. 10 of the *Code*. The nature of this question is about the Tribunal's fact finding and is properly the subject of reasonable review, as set out above.

***Adverse Impact***

84. In the Decision, the Tribunal set out the law guiding the adverse impact inquiry in this case as follows:

[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.

85. The petition does not appear to take issue with any aspect of this statement of the law. The petition says the Tribunal erred by not taking proper consideration of the parties' complex personal relationship and Ms. Olsen's conduct "did not rise to the level of harassment to effect the 'quiet use and enjoyment' in the context of a tenancy". The alleged errors attack the Tribunal's assessment of the evidence and appears to take issue with its application of the law to the facts. These are matters subject to reasonableness review, as set out above.

Petition, Part 3 at paras. 29 and 33

### ***Nexus***

86. In the Decision, the Tribunal cites *Moore* and says one of the things Terry Wiebe had to prove to make out their complaint was that “Their gender identity or expression was a factor in the adverse impact they experienced.”

Decision at para. 88

87. The petition alleges the Tribunal erred because its “findings demonstrate Olsen’s Impugned Speech was based on her experience with her mother’s breast cancer rather than discriminatory reasons related to gender identity or expression”. The petition goes on to make assertions about what Ms. Olsen says the evidence shows and what conclusion the Tribunal ought to have drawn from it. The nature of the alleged error is about applying the facts to the law. As set out above, the Court of Appeal has said the application of the law to the facts is subject to reasonableness review.

Petition, Part 3 at paras. 36-41

*Stewart* at para. 46

### **H. Preliminary Issue: Should this Court Hear New Arguments on Judicial Review**

88. As the Tribunal understands it, there is no dispute that the petitioner did not make any *Charter* arguments before the Tribunal. However, there appears to be a dispute over the implications of failing to raise her *Charter* arguments at first instance.

Petitioner’s Charter Submissions at paras. 16-18

T. Wiebe’s Charter Submissions at paras 3-9

Tribunal’s Petition Response at para. 35

89. If the Tribunal understands Ms. Olsen’s position correctly, she says that it was unnecessary for her to raise freedom of expression arguments before the Tribunal for them to be considered on judicial review. She says the Tribunal is constitutionally obligated to meaningfully consider any *Charter* right or value that is engaged by its decisions, regardless of what the parties before it argue.

Petitioner’s Charter Submissions at paras. 13, 16-18

90. Ms. Olsen relies on *Doré v. Québec (Tribunal des professions)*, 2012 SCC 12 [**Doré**], as well as two decisions that follow *Doré*: *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 [**TWU**] and *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 [**Commission scolaire**]. The approach to protecting *Charter* rights and values in the context of adjudicated administrative decisions is commonly referred to as the *Doré/Loyola* framework.
91. The Tribunal’s position, as will be explained further below, is that *Doré* and the cases that follow it, do not support Ms. Olsen’s position.
92. Terry Wiebe’s position is that Ms. Olsen has not established exceptional circumstances that could justify the Court entertaining new arguments, saying it is well-established “that a judicial review is not the appropriate mechanism to introduce new issues because it is not a re-hearing” and “Ms. Olsen was at liberty to raise *Charter* values before the Tribunal and did not do so”.

T. Wiebe’s Draft Written Submissions dated April 24, 2026 at paras 4-5

93. The Tribunal agrees this Court can exercise its discretion to hear Ms. Olsen’s new arguments. The question is whether she has established exceptional circumstances that justify this Court departing from the general rule against it. Below, the Tribunal sets out principles that may assist the Court in deciding whether this is an appropriate case to do so. The Tribunal takes no position on whether this Court should exercise its discretion to hear the new arguments.

***What are the new Charter arguments?***

94. As we understand Ms. Olsen’s arguments, she raises three *Charter*-based arguments that she did not argue before the Tribunal. She appears to say the Tribunal erred because it:

- a. Did not expressly and meaningfully address Ms. Olsen’s right to freedom of expression in concluding she had breached s. 10 of the *Code* (Petitioner’s Charter Submissions at paras. 12-13);
- b. Did not account for “the constitutionally-mandated distinction that being upset is not the same as discrimination”, which she says was established in *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43 [**Ward**] (Petitioner’s Charter Submissions at para. 30); and,
- c. Awarded damages to compensate for injury to dignity that could have been lower so as to reduce the impact on Ms. Olsen’s right to freedom of expression (Petitioner’s Charter Submissions at para. 43).

***The General Rule***

95. The general rule is that absent exceptional circumstances, a reviewing court will not consider an issue or argument not raised at first instance. There is no dispute that reviewing courts have the discretion to hear new arguments in appropriate circumstances. *York Region District School Board v. Elementary Teachers’ Federation of Ontario*, 2024 SCC 22 at paras. 55, 74, and 77, is an example of where the court found it appropriate to hear a new argument about the scope a *Charter* right. The scope of freedom of expression is not at issue in this judicial review.
96. The Supreme Court of Canada has said:

[23] Generally, this discretion will not be exercised in favour of an applicant on judicial review where the issue could have been but was not raised before the tribunal ...

[55] ... Care must be taken not to give parties an opportunity for a second hearing before a tribunal as a result of their failure to raise at the first hearing all of the issues they ought to have raised.

*Alberta Teachers* at paras. 23 and 55

97. The general rule is premised on the well settled principle that issues in litigation ought to be thrashed out at first instance.

*C.S. BCCA* at para. 56

98. In determining whether it would be appropriate to consider a new issue or argument, courts must consider the rationales underpinning the general rule, which include:
- a. respecting the legislature's choice of the tribunal as the first instance decision-maker by giving the tribunal the opportunity to deal with the issue and make its views known, especially where the new issue relates to the tribunal's specialized functions or expertise;
  - b. avoiding prejudice to the responding party; and
  - c. ensuring that the court has an adequate evidentiary record to consider the issue and the benefit of the tribunal's views and expertise on the issue.

*Alberta Teachers* at paras. 22 and 24-28

99. If any of the three rationales apply, it weighs against the court exercising its discretion to hear the new argument.

*Clearview AI Inc. v. Information and Privacy Commissioner for British Columbia*, 2024 BCSC 2311 [**Clearview AI**] at para. 212, appeal dismissed 2026 BCCA 67, citing *The Owners, Strata Plan VR 1120 v. Civil Resolution Tribunal*, 2022 BCCA 189 [**The Owners**] at para. 48

100. The Court of Appeal has rejected the argument that it matters not whether the party seeking to raise new arguments made its submission at first instance to the tribunal.

*Conklin* at paras. 28-29

*Clearview AI* at paras. 222-223

101. The Court of Appeal has also rejected the argument that a self-represented party cannot be expected to bring *Charter* arguments at first instance. In *C.S. BCCA*, the Court of Appeal

emphasized that the rationales for the general rule are “particularly weighty where, as here, the issue raised for the first time on judicial review is constitutional in nature”.

*C.S. v. British Columbia (Workers ‘ Compensation Appeal Tribunal)*, 2019 BCCA 406 [C.S. BCCA] at paras. 56 and 63

*Canada Lands Company CLC Limited v. Schlieper*, 2025 BCCA 145 [Canada Lands] at para. 64

*Lawrence v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2025 BCCA 343 at paras. 29-30

102. This Court has specifically rejected an argument that *Doré* stands “for the principle that a party can raise *Charter* values on judicial review at first instance.”

*Clearview AI* at para. 222

103. This Court explained in *Clearview AI*:

[223] The general proposition advanced by the Court in *Doré* at para. 35, must be read in conjunction with the rest of the decision. It is evident that in developing the framework on which *Clearview* now relies, the Court in *Doré* was contemplating a situation where *Charter* values were raised before the administrative decision maker. This is evinced at paragraph 54 where the Court states “the administrative decision-maker will generally be in the best position to consider the impact of the relevant *Charter* values on the specific facts of the case”.

104. The Court of Appeal has also rejected attempts to argue a new “theory” of the case to the court, finding it effectively asks the court to retry a complaint, which is not a reviewing court’s function.

*Forsyth* at paras. 49-50

*VANDU* at paras. 101-102

105. The approach to considering new issues and arguments raised on judicial review, described and applied in cases like *Clearview AI*, *Conklin*, *C.S. BCCA*, and *Forsyth*, accords with the methodology of reasonableness review established in *Vavilov*. In *Vavilov* the Supreme Court of Canada made it clear “that the reviewing court must be sensitive to the

fact that a tribunal's decision and reasoning process will be informed by and responsive to the arguments before it."

*Vavilov* at para. 128

### ***Relevant Considerations***

106. Beyond saying the Tribunal was obligated to address her *Charter* rights, Ms. Olsen does not appear to point to any factors she says are relevant to this Court's exercise of discretion. Accordingly, it is difficult to respond. In any event, to assist this Court, the Tribunal sets out factors below that may be relevant to the issue.

### ***Was Ms. Olsen practically precluded from raising freedom of expression before the Tribunal?***

107. First, a relevant factor may be whether the party raising the new argument was practically precluded from raising the issue before the tribunal. Ms. Olsen has not said she was precluded from making her *Charter* arguments at first instance. Terry Wiebe's position is this weighs against this Court entertaining the new arguments.

*R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)*, 2021 BCCA 67 [**RNL**] at para. 74

T. Wiebe's Charter Submissions at para. 5

### ***Is there an adequate evidentiary record before the Court?***

108. Second, another relevant factor may be whether any party or the tribunal would be prejudiced if the issue is addressed for the first time on judicial review. Terry Wiebe says this factor is relevant because they and the Tribunal "did not get a chance to hear and consider the argument and there is no adequate evidentiary record to consider the issue".

*Alberta Teachers* at para. 26

T. Wiebe's Charter Submissions at para. 15

109. As set out above, the Tribunal is a specialized decision maker and the test for discrimination in tenancy is well settled. There does not appear to have been a dispute

before the Tribunal that *Moore* governed. However, the petitioner seems to suggest that *Ward* may have altered the *Moore* test in some way. This is a novel argument.

Petitioner's Charter Submissions at paras. 29-42

110. *Ward* arose from Quebec's somewhat unique statutory human rights regime (the *Quebec Charter*). It was about whether speech – that occurred outside the areas of social life protected by the *Code*, like tenancy – was discriminatory under s. 10 of the *Quebec Charter*. It drew on the Supreme Court of Canada's hate speech jurisprudence – *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 [**Whatcott**] – to define the scope of speech that was discriminatory under that section of the *Quebec Charter*. *Ward* did not address the well settled test for discrimination set out in *Moore* because there was no question that *Moore* did not apply to that section of the *Quebec Charter*; that section of the *Quebec Charter* was governed by a legal framework distinct from *Moore*.
111. The petitioner's arguments that the Tribunal was required to balance Ms. Olsen's freedom of expression when determining the appropriate amount of damages for injury to dignity is similarly novel. The petitioner has not explained or cited any authority that stands for the proposition that the *Doré/Loyola* framework is applicable to decisions on remedy, as opposed to the merits of a decision.
112. In deciding whether to exercise its discretion to hear the *Charter* arguments, this Court may want to ask itself whether it can discern the Tribunal's views on how, if at all, *Ward* alters the *Moore* test or whether the *Doré/Loyola* framework applies to compensatory remedies, absent it being asked to decide those issues. This involves an assessment of whether the Tribunal implicitly decided those issues, which we address next.

***Can this Court discern the Tribunal's views, even by implication?***

113. Another relevant factor is whether this Court can show the required deference to the Tribunal, if it considers the new arguments. If a reviewing court cannot show adequate deference to the administrative decision maker, because it cannot discern the decision

maker's views, even by implication, this should generally lead the court to refuse to entertain the new argument.

*Canada Lands* at paras. 56 and 63, citing *The Owners* at para. 48

114. *Alberta Teachers* is an example where the reviewing court could show adequate deference to the tribunal although the issue was not raised before the first instance decision maker. The Supreme Court of Canada found that the issue was implicitly decided by the first instance decision makers and there was no evidentiary inadequacy or prejudice to the parties in considering it. In *Vavilov*, the Supreme Court of Canada described this as "a very specific and exceptional circumstance".

*Alberta Teachers* at paras. 5 and 29

*Vavilov* at para. 98

115. On its face, the Decision does not cite s. 2(b) of the *Charter* or discuss freedom of expression. The question for this Court is whether, reading the Decision holistically and contextually, it can discern the Tribunal's view on all the new arguments that rely on freedom of expression, even impliedly, and show adequate deference to the Tribunal's views on the new arguments?
116. Importantly, as the Tribunal understands the petition, it raises several new arguments related to the *Charter*. Therefore, this Court must consider whether it can show adequate deference to the Tribunal on each, when deciding whether to hear them. This Court may want to ask itself whether it can show the Tribunal adequate deference, because the Decision implicitly, decided:
- a. The appropriate balance between Ms. Olsen's right to freedom of expression and the purposes of prohibiting discrimination in tenancies under s. 10 of the *Code*?
  - b. Whether and how *Ward* alters the well-established test for discrimination under s. 10 of the *Code*, and if it establishes a "constitutionally mandated distinction between being upset and discrimination"?

- c. Whether the *Doré/Loyola* framework requires a balancing exercise on remedy, as opposed to on the merits?

117. The Tribunal sets out some relevant considerations next.

***The Tribunal's Case Law is Relevant Context***

118. The Tribunal's case law is relevant to a contextual reading of the Decision. Past decisions may illuminate an aspect of the tribunal's reasoning that is not apparent from the reasons because the tribunal may have been following their own case law. As previously noted, the Tribunal is assumed to know the law and reviewing courts should not presume it is unaware of trite propositions of human rights law.

*Vavilov* at para. 94

*Skerry* at para. 29

119. The Tribunal's case law recognizes that where a complaint engages *Charter* protections, it must interpret and apply the *Code* in a manner that proportionately balances its purposes with *Charter* protections per the *Doré/Loyola* framework.

*Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 [**Oger**] at para. 55

*Barker v. Molson Coors Breweries and another (No. 3)*, 2019 BCHRT 192 at para 31

*Yaniv v. Various Waxing Salons (No. 2)*, 2019 BCHRT 222 at para 13

120. The Tribunal's case law also recognizes that:

... speech which adversely impacts a person in connection with a characteristic protected by the *Code* is prohibited in all the social areas which the *Code* regulates: see e.g. *Pardy v. Earle*, 2013 BCSC 1079 at para. 194; *Brito v. Affordable Housing Societies and another*, 2017 BCHRT 270 at paras. 40-45. Sexual and racial harassment are the most obvious examples of this. Whenever people use words in a way that substantively attacks and undermines a person's dignity in connection with their work, housing, or access to public services, because of personal characteristics protected by the *Code*, they run afoul of human rights law: *Schrenk*.

*Oger* at para. 52

***The Tribunal's Decision in Chilliwack Teachers' Association v. Neufeld***

121. The petitioner relies on *Chilliwack Teachers' Association v. Neufeld (No. 10)*, 2026 BCHRT 49 [***Chilliwack Teachers***] at para. 21, where the Tribunal said, “it was incumbent on us to balance [the respondent’s] right to free expression in the application of s. 7(1)(a) of the *Code*” despite the respondent’s position that he “was not asking the Tribunal to balance his *Charter* rights”. Respectfully, to understand the implications of that statement for the present petition, it must be read in context.
122. In *Chilliwack Teachers* the complainants alleged the respondent breached three provisions of the *Code*, each of which is governed by a different legal test: s. 13, which prohibits discrimination in employment and is governed by *Moore*; s. 7(1)(a), which prohibits publications that “indicate discrimination or an intention to discriminate”, and; s. 7(1)(b), which prohibits hate speech. The complainants said statements made by the respondent breached these sections of the *Code*. That is, the complainants said the same factual matrix gave rise to breaches of three sections of the *Code*.
123. The Tribunal sets out the tests applicable to each of the three sections at issue in that case. Citing *Moore*, the Tribunal said the test for discrimination in employment was well-established. Citing *Whatcott* and *Ward*, the Tribunal said the test for hate speech required a somewhat more nuanced balancing of interests, but the test was well settled.

*Chilliwack Teachers* at paras. 17-18

124. It was only with respect to s. 7(1)(a) that the Tribunal found it was necessary to expressly grapple with how to balance the respondent’s expressive rights with the purposes of that section of the *Code*. The Tribunal said:

Given the strenuous public debate surrounding SOGI 1 2 3, and evolving principles in the law, this section requires us to balance Mr. Neufeld’s right to freedom of expression with the purposes of prohibiting discriminatory publications in the *Code*: *Doré v. Barreau du Québec*, 2012 SCC 12, *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, and *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33.

*Chilliwack Teachers* at paras. 17-19

125. Finally, the Tribunal said the complainants had addressed the respondent's *Charter* rights in their closing submissions. And, despite the respondent's position that he was not asking the Tribunal to balance his *Charter* rights with the statutory objectives of the *Code*, the Tribunal said many of his arguments "loosely reflect[ed] the kind of proportionality analysis that administrative decisionmakers engage in when making decisions that may affect *Charter* rights or values".

*Chilliwack Teachers* at para. 21

***If the Court exercises its discretion to hear any of the new arguments, what is the standard of review?***

126. If this Court finds there are exceptional circumstances that justify it entertaining any of the new arguments on judicial review, there is a question about the applicable standard of review.
127. The Tribunal's position is that the reasonableness standard applies to the new arguments about the alleged errors in the substance of the Decision. The nature of these questions goes to the proportionate balancing and whether the Decision unjustifiably limited Ms. Olsen's freedom of expression.

*Vabuolas v. British Columbia (Information and Privacy Commissioner)*, 2025 BCCA 83 at paras. 72 and 95-96

128. The Tribunal's position is that the patent unreasonableness standard applies to the alleged error on remedy. This is because the nature of the issue concerns whether the Tribunal erred in exercising its discretion to award a specific amount to compensate Terry Wiebe under s. 37(2)(d)(iii) of the *Code*.

**I. Threshold Issue: Should the Court extend the time to file the petition?**

129. There appears to be no dispute that the petition was filed one day past the 60-day time limit to file a petition for judicial review of a final decision of the Tribunal.

ATA, s. 57(1); made applicable by *Code*, s. 32(p)

130. The Court may extend the 60-day time limit if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.

ATA, s. 57(2)

131. The Tribunal takes no position on the issue of whether the Court should extend the time limit for this petition.

**J. Is the finding that there was a tenancy relationship unreasonable?**

132. The Tribunal takes no position on this issue.

**K. Is the finding of that Terry Wiebe experienced an adverse impact in tenancy unreasonable?**

133. The Tribunal takes no position on this issue.

**L. Is the finding of that Terry Wiebe's gender identity and expression was a factor in the adverse impact unreasonable?**

134. The Tribunal takes no position on this issue.

**M. Is the compensation order patently unreasonable?**

135. The Tribunal takes no position on this issue.

**N. If the Court's intervention is warranted, what relief is available?**

***Substantive Relief***

136. If the Court finds that its intervention is warranted, there is an issue about the appropriate remedy. The petitioner seeks a declaration that the Decision unreasonably infringes her right to freedom of expression.
137. The general rule is that where a party succeeds on judicial review, the appropriate disposition is to order a reconsideration before the administrative decision-maker, unless

exceptional circumstances indicate that the court should make the decision the legislation has assigned to the administrative body.

*Workers Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 at para. 51

*Vavilov* at paras. 141-42

138. The Court of Appeal has said:

... [A declaration] is a binding statement by the court establishing a right, power, duty or status. A declaration is a discretionary remedy. Even if a person establishes the existence of a right, power, duty or status, a court will generally not grant the remedy unless it considers that it will have practical effect and resolve an extant legal dispute.

*Pereira v. British Columbia (Workers' Compensation Board)*, 2023 BCCA 195 at para. 16 (see generally paras. 14-18)

### **Costs**

139. Costs are not normally awarded to or against tribunals on judicial review. The petitioner does not provide any basis to award costs against the Tribunal and the Tribunal opposes an award of costs to or against it.

*18320 Holdings Inc. v. Thibeau*, 2014 BCCA 494

Date: May 27, 2026

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Counsel for the Tribunal