

Expelling Transphobia

A handbook of strategies to address transphobic attacks in the B.C. school system



LAWYERS AGAINST
TRANSPHOBIA

COMBATting TRANSPHOBIA IN CANADIAN SCHOOLS

About Lawyers Against Transphobia

This handbook was written collaboratively by a committee of Lawyers Against Transphobia (LAT) including Lee Airton, James Chamberlain, barbara findlay, Jay Landon, Susanna Quail and Kylie Walman.

LAT is an ad hoc group of lawyers, teachers, parents, and other justice workers who are committed to addressing transphobia by speaking up in the profession, in the courts, in the school system, and in the media; responding to incidents of transphobia as they occur.

LAT was born in British Columbia (B.C.) but is growing nationally.

Feel free to reach out to us at lawyersagainsttransphobia@gmail.com

About the Authors

Lee Airton (they/them) is an Associate Professor of Gender and Sexuality Studies in Education at Queen's University in Katarokwi/Kingston, Ontario. They are the co-creator of www.gegi.ca - a self-advocacy hub for K-12 students experiencing gender identity and gender expression discrimination at schools. www.leeairton.com

James Chamberlain is a retired school principal. He's been a gay primary teacher and union activist helping BC school boards to develop 2SLGBTQIA+ policies and educating teachers for more than 25 years.

barbara findlay KC is a queer cis lawyer who has been working on trans rights for more than 30 years.

Jadine Lannon (they/them) is a queer nonbinary lawyer practicing human rights, labour, and employment law on the territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh Úxwumixw (Squamish), Səl̓íl̓wətaʔ/Selilwitulh (Tsleil-Waututh) nations, in an area with the colonial name of "Vancouver".

Susanna Quail is a labour and human rights lawyer. She is a queer parent raising her family on the unceded territory of the Musqueam, Squamish, and Tsleil Waututh nations.

Kylie Walman is a queer cis lawyer practicing solely in family law. Kylie practices in the Okanagan on the unceded territory of the Syilx, Secwépemc, and Nlaka'pamux peoples.

About the Handbook

This handbook was written to assist the hardworking school trustees in B.C. who are being targeted with transphobic and homophobic abuse.

The summer 2024 release includes:

- Chapter 1: A Five Alarm Fire
- Chapter 2: Legal Ways to Deal with Transphobia
- Chapter 3: Defending School Boards and Meetings from Transphobic Attacks

The summer 2025 release includes:

- Updates to Chapters 1-3
- Chapter 4: Supporting Student Rights
- Chapter 5: Parent Rights and Responsibilities
- Chapter 6: Superintendent Rights and Responsibilities

Later releases will include:

- Educator Rights and Responsibilities

We encourage anyone who is fighting to defend transgender kids in school systems across Canada to use this handbook as a starting point to develop similar tools and resources that are specific to your locations.

This handbook was edited and designed by [Kitty Rodé](#).

Table of Contents

Chapter 1: A Five Alarm Fire	6
Introduction	6
Trans kids are the perfect political target	7
Schools as a site for transphobic violence	8
A question of life or death	9
Saskatchewan's cynical gamble	10
Supporting trans students in British Columbia	11
A threat to all equality rights	13
Responding to transphobia involves unlearning and relearning	14
Chapter 2: Legal Ways to Deal with Transphobia	16
Recognizing transphobia	16
Examples of transphobic attacks	19
School board rights	20
When governments are transphobic	20
What can be done to address harassment?	21
Harmful speech as a human right violation	22
Unaddressed transphobia as discrimination	25
How to file a provincial human rights complaint	25
Hate speech is a crime	26
Suing for defamation	27
Chapter 3: Defending School Boards and Meetings from Transphobic Attacks	30
Employment discrimination	31
Hate speech is prohibited by the <i>Human Rights Code</i>	31
The school board environment	32
SOGI in B.C. schools	33
Trustees	33
Tools to address transphobia	34
Managing disruptions at school board meetings	38
Chapter 4: Supporting Student Rights	45
Overview	45
Our message to students	46
What the law says	47

Transphobic bullying	56
Gender identity and/or gender expression discrimination	62
What to do when bullying or discrimination continues or is unaddressed	70
Taking things beyond the school board	82
Supporting a student who is experiencing GEGI discrimination or transphobic bullying	84
Appendix 1: Discriminatory Exemptions from 2SLGBTQIA+ Content	86
Appendix 2: Ontario Inclusive Schools & Anti-Bullying Legislation and Government Policy	88
Appendix 3: British Columbia Inclusive Schools Legislation and Government Policy	91
Appendix 4: <i>James Chamberlain v. Surrey School District No. 36</i>	94
Chapter 5: Parent Rights and Responsibilities	95
Parents' rights and freedoms under the <i>Charter</i>	95
Parent's rights and obligations under the <i>School Act</i>	97
Children's rights under the <i>Charter</i>	98
Balancing parents' rights claims and children's rights in schools	98
Conclusion	100
Chapter 6: Superintendent Rights and Responsibilities	101
Introduction	101
Recap: the five alarm fire	103
Transphobia in schools	106
Transphobia directed at school boards	107
School boards' responsibility to address transphobia	112
Transphobic school trustees	124
Transphobia and school board elections	125
When you are the target	126
Transphobia under the guise of parental rights	130
Policy Resources	134

Chapter 1: A Five Alarm Fire

Introduction

Saskatchewan has legislated the rights of **transgender** kids out of existence in schools. Alberta may well follow suit in the coming months. And while school districts, educators, students and families are fighting back as hard as they can, New Brunswick's [Policy 713](#) is attempting to harm trans youth in similar ways.

The Canadian Security Intelligence Service (CSIS) has warned that the anti-gender movement poses a threat of extreme violence for **2SLGBTQIA+** communities.¹

Canada's right-wing has chosen transgender youth in schools as a site for their efforts to galvanize voters to support an agenda that will ultimately result in the loss of equality and human rights for us all.

This latest wave of transphobia originated in the U.S.

As of spring 2024 there are currently 552 transphobic bills in 42 states. Of those, 35 have passed, 324 are active, and 193 have failed. These laws cover everything from prohibitions against a parent supporting their trans child to transition on pain of having their child apprehended (Florida), against doctors providing trans-affirming care (Texas), against anyone using a washroom that doesn't 'match' their sex assigned at birth (multiple states), to prohibitions against trans athletes playing on teams that match their gender identity (one third of states have already passed laws banning transgender students from participating in sports consistent with their gender identity).

Less than five years ago the right-wing in B.C. was targeting trans youth who were seeking gender-affirming care and litigating to prevent them from accessing that care. They brought court cases against doctors and against gender-affirming parents. They harassed and reported care providers to professional associations.

So far, their efforts have failed.

B.C. courts have established unambiguously that if a trans youth understands the nature and consequences of gender-affirming care, and their health care provider believes that care to be in their best interest, no one can prevent that care from happening. Courts have

¹ CBC News: CSIS warns that the 'anti-gender movement' poses a threat of 'extreme violence'. <https://www.cbc.ca/news/politics/csis-lgbtq-warning-violence-1.7114801>

also established that professionals providing care are not guilty of ‘unprofessional conduct’ as charged by right wing actors at the time.²

Trans kids are still the focus of these groups - but now they are being targeted in schools.

A word about words

In this handbook we use **trans** or **transgender** to refer to anyone whose gender identity does not correspond with what is socially expected based on their sex assigned at birth. Trans can be used as an umbrella term referring to a range of gender identities and experiences that transcend beyond, exist between, or cross over the gender spectrum. It can include, but is not limited to, people who identify as transgender, transsexual, Two-Spirit, non-binary or gender non-conforming (gender variant or genderqueer).

References: [EGALE LGBTQI2S Glossary](#) and [The 519 Glossary](#)

2SLGBTQIA+ is an acronym meaning Two-Spirit, lesbian, gay, bisexual, trans, queer, intersex, asexual and more.

Transphobia describes attitudes and actions which do not accept the existence or the human rights of trans people.

Homophobia describes attitudes and actions which do not accept the sexual orientation of gay, lesbian, bisexual, or Two-Spirit people.

SOGI stands for ‘sexual orientation and gender identity’. In B.C. the provincial resource for teachers is called [SOGI 123](#).

Trans kids are the perfect political target

Trans youth are among the tiniest, least powerful and most isolated constituents. Focusing on trans kids in school allows transphobes to conceal their harmful views under the guise of protecting children and supporting ‘parental rights’.

For example, anti-trans groups insist that parental rights include the right to be informed of a child’s gender identity disclosures at school, regardless of whether the child consents to

² *A.B. v C.D.* 2020 BCCA 11, followed in *A.M. v Dr. F.*, 2021 BCSC 32. In *complainant v College of Physicians and Surgeons of B.C. (No 1)* 2023 BCHPRB 88, the Health Professions Review Board of B.C. dismissed an allegation that one of the doctors who had provided treatment to the youth in *A.B. v C.D.* committed professional misconduct by prescribing testosterone to A.B.

this disclosure. As a legal strategy, it has no basis: there is no such thing as constitutionally protected parental rights.

But it is a brilliant political strategy.

Who can oppose parental rights? Parents are voters, and many parents cannot accept the idea that *their* child might be trans, that people at school might know about it, and that they have been left in the dark. Never mind the impossibility of completely concealing information from parents if it's known by other students (and therefore other parents) in the community. Yet, misinformation abounds.

Schools as a site for transphobic violence

School trustees who support trans kids are routinely harassed and targeted to prevent them from running for elected office again; allowing transphobes to run in their place.³ Transphobic parents decry the inclusion of resources that portray a diversity of gender identities and sexual orientations and demand the removal of books from school libraries. We also see that inclusive teachers, especially transgender teachers, are viciously targeted on social media.

Recent transphobic actions against schools and school boards have included:

- Picketing schools
- Disrupting school board meetings
- Harassing and **doxing** trans and queer teachers
- Harassing school trustees
- Protesting outside of school board offices
- Coordinating efforts to elect trustees with a transphobic agenda
- Alleging that teachers and trustees are indoctrinating children and allowing pornography in schools by including [SOGI resource materials](#) to supplement the existing provincial curriculum

Doxing is the act of searching for and publishing private or identifying information about a particular person, usually with malicious intent.

³ CBC News: Scores of anti-trans candidates running in Ontario school board elections.
<https://www.cbc.ca/news/canada/ontario-school-board-trustee-investigation-1.6622705>

A question of life or death

Transgender children and youth are an extremely vulnerable population. They find themselves to be a gender for which there may be no model for their experience. Their gender identity is frequently not affirmed by the people around them, potentially including their family. In severe cases, they face transphobic violence from these same people including physical and emotional abuse, barriers to supports including health care, and homelessness.

Many trans youth are forced to face the impossible dilemma of having to guess whether their parent will be supportive or rejecting, if they decide to tell their parent about their gender.

The risk of disclosure is acute and contributes to increased mental and emotional distress and even suicide in trans youth populations.

A study in the Canadian Medical Association Journal found that **transgender adolescents had a risk of suicidal ideation five times the rest of their age cohort, and a risk of suicide attempts 7.6 times their age cohort.**⁴ The risk of suicide increases if they do not have a supportive parent or teacher. Conversely, their risk of suicide decreases if they are supported in their gender identity. Trans children's risk of suicide is further exacerbated if they experience discrimination in the form of physical or verbal harassment, physical or sexual assault, or exclusion because of their trans identity.⁵

Some trans students may face a difficult journey of transition. For many of these students, schools may be the only safe place in their lives. It is the legal duty of schools and school boards to keep transgender children, teachers, staff and administrators safe from discrimination or bullying.⁶

⁴ Suicidality among sexual minority and transgender adolescents: a nationally representative population-based study of youth in Canada. <https://www.cmaj.ca/content/194/22/E767>

⁵ Centre for Suicide Prevention: Transgender people and suicide. <https://www.mentalhealthcommission.ca/wp-content/uploads/drupal/2019-05/Transgender%20people%20and%20suicide%20fact%20sheet.pdf>

⁶ In *School district No 44 (North Vancouver) v Jubran* 2005 BCCA 201, the highest court in B.C. confirmed that school boards have a legal duty to provide a non-discriminatory learning environment. This includes a duty to address discriminatory conduct toward students by other students.

Saskatchewan's cynical gamble

The Saskatchewan Party has passed legislation⁷ which undermines the rights of transgender students and invokes the **notwithstanding clause**: a provision that **overrides students' constitutional equality protections** under the [Canadian Charter of Rights and Freedoms](#) (often referred to as the *Charter of Rights* or the *Charter*).

Premier Scott Moe's law requires that teachers and school staff must **'out'** any trans⁸ student to their parents, regardless of whether the student consents to having their identity disclosed.

Outing is the act of disclosing a person's sexual orientation or gender identity without their consent. It is derived from the term "coming out".

Moe didn't start this course of action with a law. He started with a policy in the same terms. But Saskatchewan courts held that the policy was a violation of students' equality rights under the Charter and held that it could not be used.⁹

In response, Moe took a draconian next step that should alarm every Canadian.

He used the [notwithstanding clause](#).

The *Charter of Rights* was enacted in 1982 and has been part of the Canadian constitution ever since. The *Charter* is powerful because it enables people to challenge laws made by a province, territory, or federal government on the grounds that the law breaches a *Charter* protection. If a court agrees that a law offends the *Charter*, it can suspend the operation of the law.

The notwithstanding clause in the *Charter* enables governments to *overrule* some of the *Charter* protections if they put an explicit clause in the legislation saying it operates 'notwithstanding the *Charter of Rights*'. Such a law automatically expires after five years.

Those who framed the *Charter* assumed that the use of the notwithstanding clause would be so politically toxic that governments simply would not use it. However, we now see the Saskatchewan government gambling that it will gain more conservative voters by targeting

⁷ The Education (Parents' Bill of Rights) Amendment Act, SS 2023, c 46.

<https://www.canlii.org/en/sk/laws/astat/ss-2023-c-46/latest/ss-2023-c-46.html>

⁸ In this handbook we use the shorthand 'trans' to include people who identify as transgender, non-binary, Two-Spirit, or gender non-conforming.

⁹ *UR Pride Centre for Sexuality and Gender Diversity v Saskatchewan (Education)*, 2023 SKKB 204.

<https://www.canlii.org/en/commentary/doc/2024CanLIIDocs895>

trans children than it will lose by using the notwithstanding clause. New Brunswick has taken the step of imposing a similar policy. As of summer 2025, that policy has been overturned by the election of a Liberal government.^{10 11}

Alberta has announced an intention to introduce a policy that will go further than either Saskatchewan or New Brunswick. It not only addresses trans kids in schools but will also intervene to block access to medical care for trans kids. It will restrict access to puberty blockers, hormone therapies, and gender-affirming surgeries for trans youth, all of which can be lifesaving for trans kids.¹²

Supporting trans students in British Columbia

The B.C. Ministry of Education has supported the rights of trans students in three important ways.

Since 2016 the Ministry has required school boards to reference sexual orientation and gender identity (SOGI) in district and school codes of conduct. The ten key components for school boards to consider in creating policy or procedures include:

- **Common language:** an understanding of how to refer to gender identity, gender expression, and transgender people.
- **Safety/anti-harassment:** proactive and reactive measures that include sexual orientation and gender identity.
- **Self-identification:** students have the right to self-identify, including by the name and pronouns corresponding to their gender identity.
- **Confidentiality:** students have the right to confidentiality about their sex, gender and name.¹³

¹⁰ What is the difference between a policy and a law? The difference is in how it can be changed. A policy can be changed by the next policymaker. But a law can only be changed by a legislature. Regulations are rules passed by Cabinet pursuant to legislation; and regulations can only be changed by Cabinet or by the legislature.

¹¹ Policy change was passed on December 19, 2024 and took effect on January 1, 2025.

¹² CBC News: How Alberta's proposed trans youth rules fit into a polarized international landscape. <https://www.cbc.ca/news/canada/calgary/alberta-trans-youth-rules-international-landscape-1.7135324>

¹³ Students in B.C. are protected by the *Freedom of Information and Protection of Privacy Act*. But it is important to note that parents have a right under s. 9 of the *School Act* to request the school record of a student. If the school record includes information about a trans student's gender identity

- **Dress guidelines:** students may express their gender identity or expression through what they wear to school. Dress codes should be as all-inclusive as possible.
- **Gender integrated and inclusive activities:** integrated and inclusive activities enable students to join teams and groups that they feel correspond with their gender identities.
- **Educator training:** all staff will be provided with knowledge and tools to develop an understanding of SOGI and how it impacts students.
- **Inclusive learning:** materials and activities will include positive images and accurate information about sexual and/or gender diversity.
- **Facilities:** individuals may choose to use washrooms and change rooms matching their gender identity, including non-gendered single-stall washrooms and change rooms.
- **Inclusive extra-curricular activities:** students will be included and accommodated in all extra-curricular activities; and are supported to set up a [Gender-Sexuality Alliance/Gay-Straight Alliance](#).

A resource for teachers called [SOGI 123](#) was created in 2018. The SOGI 123 website includes model policies, information about inclusive environments, and a network of SOGI educators in all 60 school districts in the province. Most importantly, there is a robust selection of curriculum resources for all grade levels. These resources are optional.

In 2024, in response to transphobic disruption of schools and school boards, B.C. enacted bubble zone (called “access zones”) legislation, which enables the Cabinet to designate a zone around a school property where protests, disruption, intimidation or interference with entry to a school are prohibited.¹⁴ Almost all school boards in B.C. have been designated to have an access zone.

In B.C., when a student **comes out** to a teacher, the teacher may explore with the student whether it is safe to come out to their parents and, if so, support them with disclosing. This

(pronoun, name) they are at risk of having that information disclosed to their parent, depending on how the school has stored information about the student’s name and gender identity.

¹⁴ *Safe Access to Schools Act* SBC 2024 c 22 came into force on May 16, 2024. As of June 9, 2024, “access zones” were established for the following schools: (a) schools operated by a board of education, other than the Qwam Qwum Stuwixwulh Community School in the City of Nanaimo; (b) schools operated by a francophone education authority and (c) schools operated by an independent school authority, other than listed Indigenous schools. Order of the Lieutenant Governor in Council #287 May 31, 2024: https://www.bclaws.gov.bc.ca/civix/document/id/oic/oic_cur/0287_2024.

is because a student will be more likely to thrive if they have parental support. A school will never out a student to their parent as queer or transgender without the student's consent. To do so would be a violation of students' right to privacy.¹⁵

Coming out is the act of disclosing your own sexual orientation or gender identity.

A threat to all equality rights

If Moe's Saskatchewan Party is correct in its gamble that transphobia is more politically saleable than equality, and if he wins the next election, it will serve as a signal to all political leaders that they can override the equality rights of transgender students with impunity.

But that will not be the only lesson.

The bigger lesson is that politicians will learn they can override *anyone's* equality rights if those rights get in the way of whatever the current political priorities are. If a government can get away with legislation to restrict the rights of transgender youth, you can expect to see governments use the notwithstanding clause to advance all manner of discriminatory legislation in the future.

In 2023, 69% of delegates to the Conservative Party's policy convention voted in favour of a motion that said youth under 18 should be prohibited from accessing "life-altering medicinal or surgical interventions" to treat "gender confusion and dysphoria".¹⁶ Party leader Pierre Poilievre openly supports Alberta's transphobic policy initiatives.¹⁷

The fire that is currently licking around the fuel of the equality rights of transgender youth will consume all our equality rights.

Within a generation, "equality rights" may be nothing but a quaint memory in Canada. Provincial and territorial governments will have eroded our legal protections by using the

¹⁵ *UR Pride Centre for Sexuality and Gender Diversity v Saskatchewan (Education)*, 2023 SKKB 204.
<https://www.canlii.org/en/commentary/doc/2024CanLIIDocs895>

¹⁶ Correspondence from *Office of the Information and Privacy Commissioner* for B.C. dated May 22, 2024, establishes that any disclosure of personal information by a school district must comply with provisions of the FIPPA. Under s. 19(1)(a), a School District would be permitted to refuse disclosure if the information could reasonably be expected to threaten a person's safety or mental or physical health. See also [OPIC Order 115-1996](#) with respect to a parent's request to access a school counsellor's notes about her children.

¹⁷ CBC News: Pierre Poilievre defends Alberta Premier Smith on transgender policies.
<https://www.cbc.ca/news/politics/pierre-poilievre-danielle-smith-transgender-1.7106283>

notwithstanding clause to satisfy the political whims of the day and keep themselves in power.

Responding to transphobia involves unlearning and relearning

The fight to protect and support trans kids involves recognizing that anyone who attended high school more than ten years ago was taught to believe certain things about sex and gender. That there are two, and only two, sexes. That sex and gender are the same thing. That you can tell a baby's sex and gender by doing a "diaper inspection". That sex and gender identity never changes over a lifetime. That the sexes are complementary, etc.

These things were taught as basic truths. But all of them are wrong.

There has since been a wave of education explaining how this information, taught in schools and accepted as unshakeable scientific truth, is mistaken.

Cisgender people must also learn how their ignorance about trans people contributes to the suffering they experience.

Cis or **cisgender** refers to anyone whose gender identity corresponds with what is socially expected based on their sex assigned at birth.

This involves unlearning mistruths, and relearning a new world in which there are more than two genders, where sex and gender identity are not the same thing, where gender is not determinable by one's genitals, where gender may change over a lifetime, where sex is not only heterosexual...

Unlearning and relearning can be confusing and painful processes.

It's important to remember that almost everyone has been subjected to this misinformation in some form or another. Whether in schools, or in popular culture, transphobia is currently the norm. When responding to transphobia we must consider the big picture; that there is more success in changing the hearts and minds of people with transphobic views if they are met with understanding than if they are met with furious judgement.

But we must also meet transphobia with our determination to not let it affect our schools and our youth. There are legal ways to fight back against transphobic initiatives in our schools and school boards. They are the subject of this handbook.

The transphobic attacks against school boards, teachers, staff, and students are a relatively new development for which there aren't many resources. The goal of this handbook is to orient all the players in the education system – school boards, principals, teachers and staff, students and parents – to their rights and to their responsibilities in relation to transphobia.

Chapter 2: Legal Ways to Deal with Transphobia

This chapter outlines what transphobia is, and the legal responses that are available to combat it. These legal mechanisms are available to anyone, and they can be used by school boards and by individual school trustees to deal with transphobic attacks.

Recognizing transphobia

Who are trans people?

A trans person is someone whose gender identity, their internal sense of their gender, differs from the one typically associated with the sex they were assigned at birth.

Trans people may experience their gender identity as ‘opposite’ to the sex they were assigned at birth, or they may also experience their gender as neither male nor female, identifying as nonbinary, genderqueer, agender, or other gender identities. Two-Spirit is an term that encompasses gender and sexual diversity in Indigenous communities; many Indigenous communities do not treat sexual orientation and gender identity as separate.

A person may recognize that they are trans as early as five or six years old, or when they are approaching puberty, or when they are an adult.

Most adults in Canada have completed their education with no information about trans people. The dominant Canadian culture is based on **cissexism** – the belief that one’s gender identity always and automatically aligns with the sex one was assigned at birth. So transphobia – actions resulting from those mistaken beliefs – is unfortunately commonplace.

If you are encountering an issue involving a trans trustee, student, parent, teacher, or staff for the first time, your first step is to educate yourself about trans people and their experiences of discrimination.

What is transphobia?

Transphobia includes structures, attitudes, feelings, or behaviour that:

- Denies or omits the existence of trans people

- Excludes trans people
- Stigmatizes trans people
- Treats trans people as unequal or less than human
- Discriminates against trans people

Transphobia does not require malicious intent. Like any other form of discrimination, the only relevant question is whether a structure or a behaviour results in a negative outcome which is based on a human rights-protected ground.

Some common transphobic beliefs are:

- There are only two sexes: male and female
 - Gender identity is a myth
 - Sex assigned at birth is the only valid identity protected by law
- Being trans is a mental illness that should be treated with conversion, not gender-affirming care
 - Providing gender-affirming care to young people is child abuse
- Being trans is nothing more than a popular trend that the youth are being brainwashed into following by liberal media
- Saying “God doesn’t make mistakes”
- Trans people are pedophiles who are grooming children
- Parents are in charge of their child’s gender identity and expression
- Being asked to respect a person’s pronouns is a violation of free speech
- Trans women are a threat to cisgender women
- Allowing trans women to participate in women’s sporting activities is unfair to cisgender women

Transphobic institutions may inadvertently or deliberately discriminate against trans people. A common source of inadvertent discrimination is information systems which offer spaces only for ‘M’ and ‘F’ to respond to a question about gender, so people whose gender identity is non-binary cannot be recorded properly. An example of deliberate discrimination would be a policy decision that insists everyone must play on the sports team that aligns with the gender they were assigned at birth.

Both of those examples are transphobic because they cause a negative impact on the transgender community. Both of those examples are also human rights violations.

Some systemic forms of transphobia in schools include:

Database management practices

- Unless the student and employee databases that the district uses make provision for a change to gender markers throughout the system or a change to one's name throughout the system, that system is transphobic. Every time a student or employee is misgendered, every time they are called by their **deadname**, they suffer harm.

Deadnaming is the act of calling a transgender or non-binary person by their birth name after they have chosen a new name.

Facilities

- Unless there are washrooms designated as 'nonbinary', or unless all washrooms are universal-access, some trans people have nowhere to pee. That is discriminatory.

Gendered activities

- Any activity which separates people into 'male' and 'female' or 'boys' and 'girls' automatically excludes nonbinary trans people.
- And any explicit or implicit rule that expects to sort people based on the sex they were assigned at birth, instead of by their gender identity, discriminates against all trans people.
- See LAT's resource [Accommodating Trans Students in School Extracurricular Activities](#) for more information on extracurricular activities, especially school sports.

Failure to reference trans people

- This ranges from salutations ("ladies and gentlemen"; "boys and girls", "Mr./Miss/Mrs/Ms", etc.) to curriculum that only refers to "males" and "females".

Even when policies and practices are not developed with an intention to harm anyone, they do actively harm transgender people and are therefore discriminatory.

Examples of transphobic attacks

Against a school board

- picketing outside a school board meeting
- trying to seize the agenda to create a platform for anti-trans views
- targeting individual trustees
 - by putting up posters alleging that they are harming kids
 - by doxing them on social media
 - by sending transphobic emails accusing them of being **groomers**, etc.
- a transphobic trustee publishing transphobic material or making transphobic statements at board meetings

Grooming is the act of building a trusting relationship with a young person to covertly manipulate, coerce or force them to engage in sexual activities.

Against a school

- picketing at a school
- making requests to review library holdings for being “inappropriate”
- making requests to see, or dispute, the use of SOGI resources by classroom teachers to meet the prescribed learning outcomes of the provincial curriculum
- **doxing** the school on social media
- sending transphobic emails to administrators

Doxing is the act of searching for and publishing private or identifying information about a particular person, usually with malicious intent.

Against an individual teacher, especially trans teachers

- by picketing at a school and naming the teacher on picket signs
- by demanding that a child be removed from the class of a trans teacher
- by doxing and misgendering the teacher

- by posting misinformation about the teacher online

Against a student

- complaints about the student's participation in gendered spaces including washrooms
- complaints about trans girls participating on girls' sports teams
- outing a student
- deliberate misgendering
- harassment and bullying by other students

School board rights

School boards have the right under the [School Act](#):

- to conduct their business in a manner that is not disrupted by transphobia
- for their individual trustees, teachers, staff and students to be free from transphobic attack
- to address transphobia directed at students, teachers, administrators, or school boards
- to deal with a transphobic trustee¹⁸

School boards have the responsibility to address incidents of transphobia in their school district, whether the transphobia is directed at the school board, administrators, teachers, staff, or students.

When governments are transphobic

Worst of all, a government may deliberately make policy choices or enact legislation that harms trans people and cancels their human rights. [Chapter 1](#) outlines Saskatchewan's 2023 legislation, New Brunswick policies, and Alberta's planned policies: frightening examples of governments deliberately targeting trans youth. In B.C., we currently have a government that is supportive of SOGI initiatives and the rights of trans youth.+

¹⁸ See [Chapter 3](#) with respect to the relevant *School Act* provisions.

What can be done to address harassment?

This section addresses the rights of school boards and school trustees, and how to enforce them. See [Chapter 4: Support Student Rights](#) for more information on how to support students facing transphobia at school.

For trustees and school boards being targeted by transphobes, there are four ways to deal with the problem, from a legal point of view.

- **Harmful speech as a human rights violation:** file a human rights complaint for harmful speech
- **Unaddressed harmful speech as discrimination:** file a human rights complaint for discrimination
- **Hate speech as a crime:** talk to the police
- **Defamation:** sue for defamation

If the person being targeted is at work, they may also have a WorkSafeBC claim.

- [WorkSafeBC](#) requires all employers to have a policy about how they deal with bullying and harassment, and WorkSafeBC investigates allegations of bullying.

In 2017, the Vancouver School Board was in a battle with the Ministry of Education about funding. The Minister of Education made a complaint to WorkSafeBC alleging that trustees were bullying school board staff. WorkSafeBC investigated and concluded that¹⁹ though there was no evidence that any trustees knew that their comments or conduct would humiliate or intimidate its senior staff, some of the behaviour of school trustees towards staff could be perceived as bullying and harassment.

The report noted that commonly used forms of discipline to address workplace harassment were not available because trustees were not “employees” of the VSB, and only the Minister of Education could dismiss trustees under the [School Act](#).

In response to that report, the Minister fired all the trustees and appointed an administrator. A by-election was held in October 2017 to replace all trustees.

¹⁹ CBC News: Vancouver School Board workplace made toxic by trustee behaviour, report finds. <https://www.cbc.ca/news/canada/british-columbia/vsb-bullying-report-1.4008311>

Harmful speech as a human right violation

At its root, harmful transphobic speech denies the existence of trans people through erasure and therefore denies their right to exist.

When transphobic people copy their posts to 'Libs of TikTok' or other extreme right-wing sites and social media accounts, it can result in a tsunami of harmful emails and threats. Transphobic people may go so far as to dox, or publish someone's name, address, email, or phone number.

School boards and school board trustees are one target of that kind of harassment. Transphobic people calculate that if they make life hard enough for a progressive school trustee, that trustee won't run again; the door is then open to transphobic control of school boards.

Anyone who is affected by transphobic speech can file a complaint under the B.C. [Human Rights Code](#), including school trustees, administrators, teachers, students, or parents.

The Human Rights Code says:

7 (1) A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or

(b) is likely to expose a person or a group or class of persons to hatred or contempt because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or that group or class of persons.

(2) Subsection (1) does not apply to a private communication, a communication intended to be private or a communication related to an activity otherwise permitted by this Code.

(Note that this section does not apply to emails sent to one person, since that would be a 'private communication'.)

Here's an example of a case in which a person was found to be in violation of s. 7 of the *Human Rights Code* because of the transphobic material he was publishing.

Morgane Oger was a transwoman running for election in Vancouver. Bill Whatcott distributed a flyer titled "Transgenderism vs Truth". Among other things, the flyer said that the "truth" is that Morgane Oger was male and suggests that anyone who says otherwise, including the NDP and the media, is "promoting falsehoods":

"Because gender is God given and immutable, "transgenderism" is an impossibility. A male cannot "transition" into a female, nor can a female "transition" into a male. One can only cross dress and disfigure themselves [sic] with surgery and hormones to look like the gender they are not."

The flyer went on to warn that the 'transvestite and homosexual lifestyle' puts people at greater risk of disease, and drug and alcohol abuse. It invoked the bible and warned of the "lake that burns with fire and sulfur, which is the second death".

The Human Rights Tribunal held that though Whatcott has a right to free speech, and to hold a religious view that he should try to stop a transgender person from being elected, those rights do not extend to publishing the flyer. Since the flyer demonstrated an intention to discriminate against Oger in public life and was likely to expose Oger and transgender people to detestation and vilification, it contravened s. 7.

The tribunal awarded \$35,000 to Oger as compensation for injury to dignity.

Harmful speech online

The internet has posed a challenge for courts, who are accustomed to deciding which court has jurisdiction based on where something happened.

But a post on the internet can happen 'everywhere'.

In the context of defamation law, where someone in one province makes a defamatory statement about someone else on the internet, and the target of that statement lives in a different province, the person targeted for defamation can sue in the province where they live, notwithstanding that the person who made the post doesn't live there.

We think that the same logic applies to human rights cases about harmful speech online, though to date there aren't any cases that say so. We assert that you can file a human rights complaint under the B.C. *Human Rights Code* if the speech impacts someone in B.C.

There is currently no federal legislation governing harmful speech.

The federal government has recently introduced the [Online Harms Act](#), a bill which will create a Digital Safety Ombudsperson and will require social media platforms to be accountable for hate speech. That bill is explained more fully below.

The Online Harms Act

The federal government has introduced legislation to require social media platforms to safeguard users from online hate. The *Online Harms Act* targets online content which:

- sexually victimizes a child or revictimizes a survivor
- shows intimate content communicated without consent
- bullies a child
- induces a child to harm themselves
- foments hatred
- incites violence, or
- incites violent extremism or terrorism

Social media services would have a duty to act responsibly, to protect children, and to make certain content inaccessible, specifically content that sexually victimizes a child or revictimizes a survivor; or intimate images posted without consent.

Under the proposed legislation, a Digital Safety Commission would be established. Complaints can be made to the Digital Safety Ombudsperson.

Note: if you are complaining about anything online, make sure that you document the complete interaction (e.g. if there is a post with many comments, make sure to capture the post, and all the comments).

Also, make a note of who did the documenting, so when you get to a hearing you can testify, “yes, I personally documented this post and captured all of the comments in relation to it”.

Unaddressed transphobia as discrimination

The school board has a legal duty to maintain a discrimination-free environment. This includes maintaining a discrimination-free environment at school board meetings.

If school boards permit transphobic speech at school board meetings, whether by a trustee or by a member of the public, they may be in violation of section 8 of the *Human Rights Code*, which guarantees the right to receive services or facilities customarily available to the public without discrimination, including discrimination against gender expression and gender identity.

Section 8 of the *Code* prohibits the denial or discrimination in the provision of services or facilities customarily available to the public because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of a person or class of persons.

A section 8 complaint could be filed by anyone at the meeting where transphobia went unaddressed, against the board. These remedies will be outlined in more detail in the chapters for teachers, staff, school administrators and students.

How to file a provincial human rights complaint

- It is easy to file a complaint: <https://www.bchrt.bc.ca/complaint-process/complain/>
- Free legal services to people who need help with a provincial human rights complaint is available: <https://bchrc.net/>
- Lawyers Against Transphobia may also be able to offer advice: lawyersaginsttransphobia@gmail.com

The human rights tribunal process takes a long time – some people may wait up to two years to get to a hearing. However, where a matter is urgent, there is an expedited process available. A complaint about ongoing hate on social media would probably be accepted in the expedited process.

In general, the first step in the process, after the respondent has a chance to write a response to the complaint, is a suggestion for a mediation. If you agree to have a mediation, the tribunal will appoint a mediator. You can take an advocate with you to the mediation.

If you don't agree to mediation, or if you don't arrive at an agreement at mediation, there will be a hearing. A hearing is similar to a trial.

You must file your human rights complaint within one year of the last incident of harmful speech.

Hate speech is a crime

The *Criminal Code* makes it a crime to incite hatred against an identifiable group. Section 319 of the *Criminal Code* says:

Everyone who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding two years or (b) an offence punishable on summary conviction.

This section of the *Criminal Code* draws the line between freedom of speech, which is a right guaranteed under the Charter of Rights, and equality rights, also guaranteed under the Charter.

Not every transphobic blog post or commentary, for example, is criminal hate speech. The Code prohibits hate speech which:

- incites hatred
- against an identifiable group
- where the incitement is likely to lead to a breach of the peace.

To get a conviction under this section of the *Code*, it is necessary for the Crown to prove each of those elements of the offence.

In B.C., if a person wants to pursue a hate crime charge, the RCMP has a central office to consider the complaint. Next, the RCMP refers proposed charges to the Crown to approve. There are two Crown counsel (lawyers for the government) whose job is specifically to deal with hate crimes.

If you are considering a criminal charge, start by talking to the Crown counsel in your district. You can get their contact information at

<https://dir.gov.bc.ca/gtds.cgi?searchString=Crown%20Counsel&for=>

Suing for defamation

If someone makes a public statement about you that harms your reputation by spreading incorrect information, you can sue them for defamation. A school board could also sue for defamation, since the law permits an incorporated body to sue.

The best-known case about defamation relating to schools in B.C. is [*Hansman v. Neufeld*](#).

Barry Neufeld was a school trustee in Chilliwack who made online homophobic and transphobic posts. For example, Neufeld criticized the fact that SOGI 123 materials instruct children “that gender is not biologically determined, but is a social construct”; and said that permitting children to “choose gender is nothing short of child abuse”. He also claimed that SOGI 123 “enables dysfunctional behavior and thinking patterns” and “coddles and encourages” what he regarded as the “sexual addiction of gender confusion”.

Glen Hansman was a gay man, a teacher, and a former president of the BC Teachers’ Federation (a provincial union). He was prominent in his criticisms of Neufeld’s posts, which he called bigoted, transphobic and hateful. Hansman publicly questioned whether Neufeld was suitable to hold elected office.

Neufeld sued Hansman for defamation.

Hansman responded to the defamation lawsuit by asking the court to dismiss it under the Protection of Public Participation Act (PPPA). That law was enacted to prevent people or corporations from shutting down public debate by suing for defamation.

The PPPA balances the right of someone to sue where their reputation is maligned, with the right of members of the public to comment on and criticize those views. The PPPA is essentially a screening mechanism. If a person is successful in their PPPA application, then the defamation suit can’t go forward to trial.

To succeed in a PPPA application, Hansman had to show that the comments in issue related to a matter of public interest. Once he had done that, Neufeld had to prove that his defamation action has ‘substantial merit’; that Hansman would lose if the case went to trial because Hansman had no valid defence; and that the harm to him as a result of Hansman’s criticism of his views was serious enough to outweigh the public interest in protecting Hansman’s right to comment. The court must balance the value of free speech and the value of the right to be free from discrimination.

The case went all the way to the Supreme Court of Canada, which ruled in Hansman's favour. They shut down Neufeld's defamation action under the PPPA. In considering the case, the court referred to the Charter of Rights and Freedoms, which is part of the constitution of the country.

Section 2(b) of the Charter protects freedom of speech²⁰; section 15²¹ protects the equality rights of people and the right to be free from discrimination.

The court said

"...The closer the expression lies to the core values of s. 2(b) [of the Charter of Rights], including truth-seeking, participation in political decision-making and diversity in the forms of self-fulfillment and human flourishing, "the greater the public interest in protecting it" "not all expression is created equal, and the level of protection to be afforded to any particular expression can vary widely according to the quality of the expression, its subject matter, the motivation behind it, or the form through which it was expressed."²²

The court gave special consideration to the fact that in making his comments, Hansman was protecting a vulnerable or marginalized group.

What are the takeaways from the precedent-setting *Hansman* case?

First, that trustees cannot use their platform to say bigoted and transphobic things with impunity. The public has the right to point out a trustee's transphobia or homophobia (or racism, or any other kind of discrimination), **even if their criticisms of the trustee may cast the trustee in a negative light.**

²⁰ Section 2 of the *Charter of Rights and Freedoms* say:

Everyone has the following fundamental freedoms:

- a) *freedom of conscience and religion*
- b) *freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.*
- c) *freedom of peaceful assembly; and*
- d) *freedom of association.*

²¹ Section 15(1) of the *Charter* says:

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Because of the language in this section, "and in particular", the Supreme Court of Canada has extended s. 15 to apply to marginalized groups who are not listed, in particular queer and trans people.

²² *Hansman v Neufeld* paragraph 79.

Second, that if a member of the public makes derogatory comments about an individual trustee, that trustee can sue for defamation. In other words, a trustee can file a human rights complaint against the person making transphobic statements, or they can sue them for defamation if the comments portray them in a negative light.

In some communities, transphobic people are targeting individual trustees for harassment. The transphobic right may use this kind of post as a tactic to harass trustees and make them either resign, or not run again. Over time this would mean that school boards included more transphobic voices, and that in turn could influence the ways that schools in a district are run.

A trustee says:

"As school trustees our photographs are displayed on the district website. My fellow trustees and I are aware of the CSIS report about the rise in anti-2SLGBTQI+ hate. Although I'm a cis white woman – I am scared for my safety in the community. People know who I am and there is a segment of our population who believes I am trying to indoctrinate children and "make them trans".

When I am out in the community and someone looks at me as though they recognize me, I worry they are part of one of these groups and want to do me harm."

This kind of targeting must be actively resisted.

Chapter 3: Defending School Boards and Meetings from Transphobic Attacks

School boards and school trustees are under attack by transphobic and homophobic groups. They have become a primary focus for individuals and groups intent on ending education that reflects and includes the lived experiences of 2SLGBTQIA+ people, or that discuss gender identity, gender expression, or sexual orientation; attempting to end support for trans students in schools.

[Chapter 2](#) included examples of transphobic attacks against school boards, schools, and school personnel. The attacks directed at school boards and trustees include:

- disruptions of school board meetings
- protests outside of school board offices
- coordinated political efforts to elect trustees who will push a transphobic agenda
- threats and harassment of individual trustees and administrators online and in the community, including allegations they are indoctrinating children and allowing pornography in schools
- transphobic rhetoric from a school trustee.

We have also seen internal disruption within school boards where trustees who voice their concerns about transphobic and homophobic movements have been targeted by their colleagues and alienated from their boards.

This chapter supports school boards and individual trustees confronted with transphobic harassment, whether from members of the public including parents, other trustees, school administrators, teachers and staff. It offers a clear statement of the law and provides tools that trustees can use to conduct safer school board proceedings and protect themselves against transphobic attacks.

While you read through this guide and navigate these difficult circumstances it is important to remember that: 1) discrimination on the basis of sex, sexual orientation, and gender identity or gender expression is against the law; and 2) hate speech is against the law.

Employment discrimination

Discrimination on the basis of sex, sexual orientation, and gender identity or gender expression, among other identities (the “protected grounds”²³) is prohibited by the B.C. [Human Rights Code](#) in employment, and in the provision of “goods or services customarily available to the public”, including education. Discrimination can include bullying or harassing someone on the basis of a protected ground; making comments of a derogatory nature; or failing to make or uphold policies to protect against discrimination and to ensure a discrimination-free environment. Discrimination can also include a poisoned learning or working environment, where students or employees are negatively impacted by discriminatory words and actions and those words or actions are unaddressed. A poisoned environment may be caused by a single serious incident or by the impact of words and actions that builds up over time.

Though the B.C. *Code* lists protected grounds separately, people may be marginalized for more than one reason: for example, they may be a trans woman of colour. People with compound marginalizations always experience more discrimination and harassment than people without.

Hate speech is prohibited by the *Human Rights Code*

Speech that “indicates discrimination or an intention to discriminate against a person or class of persons” or is “likely to expose a person or a group or class of persons to hatred or contempt” is prohibited by section 7 of the *Code*.²⁴

A complaint under the *Human Rights Code* must be proved “on a balance of probabilities”, it must be “more likely than not”.

²³ The complete list of grounds protected by the *Human Rights Code*, as those grounds relate to services customarily available to the public, are: Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age (s. 8). The complete list of grounds protected by the *Human Rights Code* as those grounds relate to employment are: Indigenous identity, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person (s. 13).

²⁴ Glossary term: Poisoned work environment.

<https://bchumanrights.ca/glossary/poisoned-work-environment/>

Hate speech can be a criminal offence

Under section 319(1), everyone who, by communicating statements in a public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of an indictable offence punishable by up to two years' imprisonment, or of a summary conviction offence.²⁵ Because there is a requirement in s. 319 that the 'incitement' is likely to lead to a breach of the peace, and because the offence must be proved beyond a reasonable doubt, it is a more onerous option than s. 7 of the *Human Rights Code*. A school board might consider pursuing a criminal charge in the most egregious of circumstances.

The school board environment

B.C. is divided into 60 school districts, each governed by a school board. Although curriculum and budgets are effectively set by the Ministry of Education, school boards are responsible for setting policy and determining how to use additional funds to address issues and needs particular to their district. School boards are made up of elected trustees and their responsibilities and powers are set out in the [School Act](#). The British Columbia School Trustees Association describes the role of school boards as follows:

- Setting local policy for the effective and efficient operation of schools
- Employing the staff necessary for school district operations
- Establishing conditions of employment for employees
- Preparing and approving the school district's operating budgets and capital plans
- Hearing appeals from parents and students²⁶

School boards are also responsible for hiring a Superintendent of the District. Superintendents are responsible for the supervision of schools and senior staff. They also oversee the district budget and implement approved programs in line with the district's strategic plan. The Superintendent is accountable to their Board.

²⁵ Criminal Code: <https://lois-laws.justice.gc.ca/eng/acts/C-46/page-45.html>

²⁶ The Role of Boards of Education and Trustees in BC. <https://bcsta.org/wp-content/uploads/2018/11/THE-ROLE-OF-BOARDS-AND-TRUSTEES-IN-BC-Digital.pdf>

SOGI in B.C. schools

In September 2016, the Ministry of Education directed all school boards to reference sexual orientation and gender identity (SOGI) in district and school codes of conduct.

The province has approved the use of [SOGI 123](#), a resource for teachers which offers sample policies, curriculum resources, and Pro-D resources about sexual orientation and gender identity to school boards.

The Campbell River School Board has published an excellent guide: [Frequently Asked Questions about SOGI 123](#).

B.C.'s policies in this regard stand in contrast to the explicitly transphobic policies and laws adopted in other provinces. As outlined in [Chapter 1](#), Saskatchewan has passed a law which cancels trans students' constitutional right to be free from discrimination and requires schools to 'out' trans students to their parents. New Brunswick has a policy to a similar effect. Both provinces are currently in court.

Trustees

How trustees are selected

In accordance with the *School Act*, board elections are held every four years, and anyone can run for the position of a trustee so long as they are 18, a Canadian citizen, have resided in B.C. for the past six months, and are not disqualified for any of the reasons set out in the *School Act* or regulations. The number of trustees in a particular district is determined by the minister of education as is the determination of trustee electoral areas. The *School Act* requires that boards have either 3, 5, 7, or 9 trustees and must include a board chair. A vice chair may also be elected. If a seat is open between elections, a by-election may be called to elect a trustee to take that seat.

Trustees can run on an individual platform or as part of a larger "political group". Though in the past most school board candidates were individuals, we have recently seen coordinated action in B.C. for members of certain political groups to be elected to school boards.

One example is Parents Voice BC. The organization was founded in June 2022 with the specific mandate of running candidates across the province to advance a right-wing, transphobic agenda. Parents Voice BC, like many transphobic groups, have used "parent's

rights” and misinformation to lead people to believe that parents are being excluded from their children’s education. Parents Voice BC has been a disruptive force on some school boards and at school board elections, taking the focus away from important educational issues and the critical job of ensuring our children get the best education possible.

Trustee responsibilities when faced with transphobia at school board meetings

School boards have a legal responsibility to follow human rights law in conducting their business. That includes:

- dealing with transphobic speech by a member of the public in school board meetings
- addressing transphobia from a school trustee (We deal with the school board’s obligations in relation to teachers, staff and students in the chapters dealing with them)

If a school board permits transphobia – for example, by permitting a member of the public to make transphobic speeches at a school board meeting – the board may itself be liable for a breach of the Human Rights Code. If they are faced with transphobic actions, **trustees are legally required to act to address the discrimination** by applying the *Human Rights Code*, the board’s own bylaws and policies, and general laws including the *School Act* and the *Criminal Code*.

Tools to address transphobia

To be prepared for how to deal with incidents of transphobia or other kinds of human rights violations, a board can adopt policies which govern all aspects of its operation. It is mandatory to have school Codes of Conduct, governing activities at schools; but it is also possible to develop policies setting out standards for trustees and for the conduct of board meetings.

Implementing a Code of Conduct for trustees and board meetings

The Ministry of Education and the B.C. School Trustees Association released the following criteria for school trustee codes of conduct:

- Emphasis on student achievement, equity, and well-being

- Alignment with BCSTA's six principles/ standards (integrity, respect, confidentiality, responsibility, conflict of interest and relationships;
- Alignment with existing provincial and federal legislation (i.e., *Criminal Code*, *BC Human Rights Code*, *Freedom of Information and Protection of Privacy Act*, *School Act*, *Workers' Compensation Act*);
- Provisions on:
 - respectful workplaces and relationships with others;
 - anti-racism, reconciliation & relations with local First Nations;
 - acceptable use of social media;
 - policies and procedures for breaches and sanctions with public accountability;
 - mechanisms to regularly review and affirm the code;
 - board training, including with trustee onboarding; and
- Plain language.²⁷

Boards can use this framework to develop Codes of Conduct which govern trustees as they carry out their duties.

Boards can specify in such policies, for example, that their meetings will be conducted in a manner that respects the *School Act*, and the B.C. *Human Rights Code* prohibition against speech that indicates discrimination or an intention to discriminate against a person, a group, or class of persons or is likely to expose a person or a group of persons to hatred or contempt.

Rules governing board members may specify, for example, that trustees will publicly support decisions of the Board which have been arrived at by majority vote.

It is useful to include, in a code of conduct, what will happen if someone, including a trustee, is alleged to have breached the code. The code may include provisions about how an investigation will be done, what will happen with the results of the investigation, and

²⁷ Letter to Board Chair of School District No. 63 (Saanich) August 1, 2023.
<https://saanichschools.ca/sites/default/files/-Files-2023-09/Corresp%20-%20Min%20of%20Ed%201Aug2023.pdf>

what the possible sanctions will be if a person – including a trustee – is found to have breached the code.

Boards can also establish policy and procedures about how board meetings will be conducted – for example, virtually or in person; and how the public may make presentations to the Board.

The B.C. School Trustees Association has published information material about codes of conduct for trustees.²⁸ And sample trustee codes of conduct are available.²⁹

A board may choose to establish policies governing its operations, or they may choose to codify those rules as bylaws.³⁰

A board has the power to deal with a trustee who is engaging in improper conduct at a school board meeting. Section 70 of the *School Act* provides:

70 (1) The chair or other member presiding at a meeting of the board may expel from the meeting a person, other than a trustee, who the presiding member considers guilty of improper conduct.

(2) A majority of the trustees present at a meeting of the board may expel a trustee from the meeting for improper conduct.

(3) A person who disturbs, interrupts or disquiets the proceedings of a meeting of a board commits an offence.

Implementing and using district policies

The Ministry of Education requires school boards to include sexual orientation and gender identity in their district and school codes of conduct. But there are stark differences in the strength and effectiveness of the policies created by the various school boards across the province.

²⁸ See BCSTA's [Rights & Responsibilities: a Resource Guide for School Trustees](#) and [New Trustee Orientation Guide](#)

²⁹ Qualicum School District Trustee Handbook.

<https://www.sd69.bc.ca/Board/Guiding%2520Principles/Documents/Trustee%2520Handbook.pdf>

³⁰ The board has the power to make bylaws under section 68 of the *School Act*. That section requires that a bylaw must be given three distinct readings, which (unless the board is unanimous) must be at separate meetings.

Clear and complete policies are an effective tool for trustees to rely on in addressing transphobia from any quarter.

When developing policies, consider that a transgender student has an unfettered right to assert their gender identity, regardless of the sex they were assigned at birth; and to use a name they choose. They also have the right to change that gender identity or name. In addition, a trans student has a right to have their gender identity and name kept confidential, including from their parents; so, care must be taken to protect any record of a student's gender identity so that it cannot be accessed by their parent requesting a copy of the student record. This is addressed more fully in [Chapter 4: Supporting Student Rights](#).

- Trans students, staff, teachers and school board members have a right to
 - express their gender identity in any way they wish;
 - have access to a gender-neutral washroom; and to use the washroom that best fits with their gender identity.
- A student has a right to
 - Participate in gendered activities including sports according to their determination of which gendered teams best fit with their gender identity
 - To use learning resources that reflect people with varying gender identities and gender expressions
- Students have a right to establish Gay Straight Alliances

Codes of conduct should address gender identity, gender expression, and sexual orientation explicitly. These principles will be elaborated more fully in the teachers' and students' chapters of this handbook.

Here are some sample policies:

- Nanaimo Ladysmith Public Schools' [Administrative Procedure 347 – Sexual Orientation and Gender Identity](#)
- Greater Victoria School District's [Regulation 4305 Gender Identity and Gender Expression](#)

Managing disruptions at school board meetings

The *School Act* provides that Boards are required to meet as often as necessary and at least once in every three months. Most school boards meet once a month.

School board meetings have been the site of transphobic and homophobic protests and disruptions by members of the public opposed to the inclusion of trans/2SLGBTQIA+ identities in education, SOGI resources, and the open presence of 2SLGBTQIA+ people in schools.

Recently, these groups have started campaigns aimed at banning books from school libraries. As part of their campaign, groups have published posters with the photos of trustees and allegations that they are promoting pornography in school. These posters are plastered throughout the community.

It's important to understand that this transphobic movement is **not due to a lack of understanding** about inclusion – it's **hate**. There's no amount of "myth busting" about SOGI that will put a stop to hate.

In September 2023, an Abbotsford School Board meeting was disrupted when 300 transphobic/homophobic protestors attended and attempted to speak to issues concerning SOGI. The meeting could not continue, and staff and trustees were escorted out of the building by police.

After the disruption of their board meeting in December 2023, the Vernon school board moved to online meetings only.

Similar disruptions occurred in Kelowna and Mission in the Spring of 2023.

A trustee says:

Before we moved to online meetings, I recall feeling a sense of dread the evening before a school board meeting. The worry that there would be some kind of conflict or aggression at a school board meeting was having a significant impact on me. I recall it being very daunting to deal with these issues in the moment.

But moving to an entirely online meeting platform has had a real impact on our ability to do our jobs. It's a loss for the community and for those who wish to present, particularly students.

Legislative authority to control meetings: The *School Act*

Under the *School Act*, trustees have significant powers to manage and control school board meetings. The *School Act* contains several provisions relating to the conduct of school board meetings.

Section 69 of the *School Act* states that meetings of the board are open to the public **except where the board determines that the public interest requires persons other than trustees to be excluded from a meeting.**

Section 69 of the *School Act* says:

69 (1) Subject to subsection (2), the meetings of the board are open to the public.

(2) If, in the opinion of the board, the public interest so requires, persons other than trustees may be excluded from a meeting.

Section 70 gives the chair power to regulate the meeting:

70 (1) The chair or other member presiding at a meeting of the board may expel from the meeting a person, other than a trustee, who the presiding member considers guilty of improper conduct.

(3) A person who disturbs, interrupts or disquiets the proceedings of a meeting of a board commits an offence.

Burjoski v Waterloo Region District School Board

In a recent Ontario case, [*Burjoski v Waterloo Region District School Board*](#), a court upheld the school board chair's determination to stop a citizen's presentation to a school board meeting. In that case, the chair had begun the meeting by warning that discourteous language or statements that might contravene human rights legislation would not be tolerated.

Burjoski, said that some books in the library "make it seem simple or even cool to take puberty blockers or opposite sex hormones". The chair warned Burjoski that her participation might be contravening the Ontario *Human Rights Code*, but she carried on with her presentation. The chair then stopped her presentation. Burjoski went to court to argue that the chair's decision was unreasonable because it violated her right to freedom of expression, was a breach of procedural fairness, and was biased.

Burjoski lost.

Meeting guidelines

The first line of defence in managing or preventing meeting disruptions is to develop strong policies and procedures to control board meetings. In Vernon, for example, School District #22 still allows presentations and questions from the public, but the questions must be provided to the board in advance of the meeting.

The Vancouver School Board *Public Delegation Board Meetings* policy is similar. They too, require that any member of the public wanting to address the board must provide a summary of the presentation they wish to give several days before the meeting, giving the Board the opportunity to refuse the delegation if it is not pertinent to Board business.

- The policy specifically states that a presentation may not contravene the B.C. *Human Rights Code*.
- The policy limits presentations to 5 minutes and specifies that there will be no consideration of the issues raised by the delegates at that meeting, and there will be no debate.
- Finally, the policy says that if anyone contravenes the guidelines or causes a disturbance, they will be asked to leave the meeting.

Such policies enable a Board to

- refuse permission to speak if the written submission is transphobic or homophobic
- shut down a speaker who veers from their written presentation
- manage debate

Similar policies from the Surrey School Board and the Vernon School Board are available online.³¹

A trustee says:

For our budget meeting in 2024 – we had to hire security to ensure the safety of the trustees and the public.

³¹ See SSB [Policy 2400 - School Board Meetings](#) and VSB [Board Meetings](#).

Expelling individuals

The chair of the board or any other trustee at the meeting also has the power to expel individuals, other than trustees, from a meeting where that person is determined to be guilty of improper conduct.

Expelling trustees from meetings

Occasionally, it is a trustee who is expressing views which are transphobic or homophobic.

Such a trustee may be expelled from the meeting for contravening the harmful speech section of the B.C. *Human Rights Code*, either by the chair or by vote of the majority of trustees. That power is in S.70(2) of the *School Act*.

In the *Burjoski* case mentioned above, one of the trustees challenged the chair's decision to stop Burjoski's presentation. The chair called for a vote of the trustees, and the trustees voted to uphold the chair's decision.

While in that case the trustee accepted the chair's decision, it is possible to imagine a situation where that is not the case, and where a trustee goes on to disrupt the meeting. In such a situation, the chair could request a vote of the other trustees to expel the disruptive trustee.

After the *Burjoski* case, in which the court upheld the decision of the chair to expel Burjoski, the Waterloo Region District School Board dealt with a second case. A trustee, Ramsay, accused the Chair of having incited 'moral panic' in the community by his handling of the Burjoski situation. He repeated his position at a second meeting, and tweeted about the board, calling it a farce and criticizing the Chair. After an investigation in accordance with its code of conduct, the Board voted 6-3 to sanction Ramsay for violations of the code of conduct. Ramsay was suspended from board meetings for four months.

Ramsay sought review of the penalty. But in [Ramsay v Waterloo Region District School Board](#), the Court upheld the board's disciplinary actions. The court stressed the fact that boards are permitted to adopt and enforce codes of conduct on their members.

Remedies for improper conduct by a member of the public at a school board meeting

The *School Act* treats the conduct of school board meetings very seriously. Section 70(3) of the *School Act* says that any person who disturbs a school board meeting has committed an offence.

If a person disrupts a school board meeting, a board may rely on s.177(2) of the *School Act* to force a person to leave school board property and to prohibit that person from returning except with permission. Section 177(2) can be used by several players in the education system, including principals, vice principals, directors of instruction or any other person authorized by the board. Section 177(4) says that the person making the order (principal, vice principal, etc.) may request the assistance of a peace officer. Vernon had the help of the RCMP to deliver a no trespass order to the individual who disrupted the school board meeting in December 2023. In Vernon, the school district has an informal understanding with the Vernon RCMP to deliver no trespass orders on request. In many districts, that task falls to an RCMP Liaison Officer.

If a person on whom a no trespass order has been served returns, Section 177(3) says the person is committing an offence.

Section 177 provides:

Maintenance of order

177 (1) A person must not disturb or interrupt the proceedings of a school or an official school function.

(2) A person who is directed to leave the land or premises of a school by a principal, vice principal, director of instruction or a person authorized by the board to make that direction

(a) must immediately leave the land and premises, and

(b) must not enter on the land and premises again except with prior approval from the principal, vice principal, director of instruction or a person who is authorized by the board to give that approval.

(3) A person who contravenes subsection (1) or (2) commits an offence.

(4) A principal, vice principal or director of instruction of a school or a person authorized by the board may, in order to restore order on school premises, require adequate assistance from a peace officer.

Response to transphobic attacks on a trustee

If a trustee is personally attacked, either by a transphobic member of the public or by a transphobic trustee, the trustee has some personal legal options, in addition to the options available to the Board.

If a member of the public says transphobic or homophobic things to or about a particular trustee in a school board meeting, the trustee's first line of defence is to ask the Chair to deal with the situation.

The chair of the board meeting has the power to:

- tell the member of the public to stop transphobic speech
- if the member of the public does not do so, ruling them out of order
- if the member of the public persists, asking the police for assistance in evicting them from the meeting

A board may also consider using its power under s. 177 of the School Act to forbid the member of the public from returning to school board meetings.

If a school board continues to permit transphobic or homophobic targeting of the trustee at a meeting, without addressing it, a trustee may also be able to:

- file a human rights complaint against that person for 'harmful speech' under s. 7³² of the *Code*
- file a human rights complaint against the school board for permitting the harmful speech to continue, thus denying the targeted trustee a space free from discrimination³³
- sue that member of the public for defamation

The process to file a human rights complaint is explained in [Chapter 2](#).

³² See above for details of s. 7 of the *Code*.

³³ Such a complaint would be filed under section 8 of the *Code*, for a denial of 'services or facilities customarily available to the public'. In this case the service is the school board meeting; the 'public' is the group of trustees. In the human rights context, 'public' may be narrower than the entire public.

To sue for defamation, the trustee would need to show:

- that the member of the public made the statement
- that the statement was false
- that the member of the public knew or should have known that the statement was false
- that the statement caused harm to the reputation of the trustee

A defamation action needs to be filed in B.C. Supreme Court. Generally, a lawyer's help is required.

Funds to pay for legal actions

It is expensive to start legal actions, so remedies for targeted trustees are hollow if they must also pay for the legal fees associated with taking action.

Typically, at the end of a court case, the losing party will have to pay **costs**, that is, part of the legal fees of the winning party. This amount goes some way to compensating the person who brought the suit; but it never covers all of the legal fees.

The board can consider a policy that indemnifies a targeted trustee who was successful in their human rights complaint or legal action for any legal fees not covered by an award of costs.

Currently, the *School Act* (s. 95) enables the board to pass a bylaw to indemnify a trustee if they are sued, but there is no similar provision enabling a board to reimburse expenses associated with launching a lawsuit.

Chapter 4: Supporting Student Rights

By Lee Airton, Ros Salvador and Tina Daschuk

Overview

This chapter addresses two kinds of problems students experience while at school in connection to gender expression and/or gender identity (“**GEGI**”). The first is the unfortunately common problem of transphobic bullying experienced by students in K-12 schools. The second is gender expression and/or gender identity-based discrimination. This includes things like discriminatory school policies and practices which assume no students are transgender, or require students to conform to expectations related to their assigned sex. GEGI discrimination is most commonly experienced by transgender students, but can also be experienced by cisgender gender non-conforming students.

We will offer some background information about the law and education policy so that you know what should be happening and, more importantly, what should not be happening at school. We also offer strategies to make sure those in power take action to stop transphobic bullying or change discriminatory policies and practices.

This chapter will be useful to K-12 students, but is written for an adult reader: a parent or guardian, teacher, or other supporting adult who is walking beside a transgender (or other targeted) student experiencing transphobic bullying or seeking an end to forms of discrimination at school.

Whether you are a student or an adult supporting a student, this chapter will offer practical steps to help ensure safety and wellbeing is a top priority for everyone at school.

The next section has a lot of information about the law which may be useful, but also may be overwhelming. If you do not want this degree of background information at the moment, you can flip forward to the following sections where we offer practical information about what to do in situations of (1) [transphobic bullying](#) or (2) [gender identity and/or gender expression discrimination](#).

Our message to students

If you're experiencing transphobic bullying or GEGI discrimination, we're so glad that you found this handbook and are so very sorry that you need it.

You should not need it because your school and school board should be taking steps to secure your safety and well-being. In addition to reading this chapter, we have some suggestions on what you can do right now:

- If you haven't already, **identify an adult who can support you** during the process of self-advocating for the bullying to stop or for the GEGI discrimination to be addressed. This can be a parent, another family member, a teacher or someone else at your school, a counsellor, or a community member.
 - There are suggestions for finding this person at <https://www.gegi.ca/talk-to-someone>, especially if you feel alone and can't think of anyone.
 - If you're in Ontario you can enter your school board in the text box and GEGI will also show you local 2SLGBTQ+ community organisations where you might be able to connect with a supportive adult. This person can help you with the work of documentation, policy connection and escalation.
- Students in B.C. can use the [erase Report It tool](#) to **make complaints online** about anything you see, hear or experience. In your complaint, include your school's name, what is happening, the people involved and attach any videos you have. Your school's safety team will review the report. You may submit your complaint anonymously or include your name. If you include your name, a member of your school safety team will follow up with you privately.
- **Find examples of other kids who have self-advocated at school** and learn about their experiences. Also, research queer and transgender history (lots of this is now on TikTok) and draw strength from how our people have fought and won the safety and respect we deserve for many generations, including your own.
- **Allow yourself to take breaks when you need to.** You are not letting anyone down if you need to step away from something for a little or a lot of time. The only person you are accountable to is yourself.

- **Maximise your time with people and things that make you feel good.** Dealing with transphobia is hard and you deserve every nice thing in the world.
- **This is obvious but worth repeating:** there is no substitute for nature/outside time, rest/sleep and nourishment (good food, eaten at least three times a day). Everything is easier when these things can happen.

We hope that the information we share is helpful to you, your friends, adults who support you, and other people you care about.

What the law says

*Let us be very clear: transphobic bullying and gender identity and gender expression discrimination are against the law, and **everyone** in Canada has gender identity and gender expression rights.*

Understanding these rights can help you advocate more successfully by showing a school board that they are obligated to take action to effectively address and prevent discrimination – protecting the rights of transgender students is not optional.

This section provides a rough overview of how the law generally works, but it is not legal advice (see a later section on how to find a lawyer if you need one). As well, the law varies from one jurisdiction (province/territory) to another. In this chapter, we have a particular focus on Ontario and British Columbia (B.C.).

Non-discrimination

Section 15 of the [Canadian Charter of Rights and Freedoms](#) (the *Charter*) guarantees the right to equality without discrimination under the law or by governmental institutions, including publicly funded school boards. That means that **any law or policy that a government passes can be challenged if it discriminates** against a group of marginalized citizens. And it means that the conduct of governmental institutions such as publicly funded school boards must also comply with the *Charter*.

However, if governments want to pass discriminatory laws, they can get out of the equality guarantees under the *Charter* by including a phrase that the law operates “notwithstanding the *Charter*”. That is what Scott Moe did in Saskatchewan after he passed a law requiring teachers to out trans students to their parents (read more about [Saskatchewan’s cynical gamble](#) in Chapter 1). Moe’s first attempt was thrown out by the courts, so he passed a

second law, using the [notwithstanding clause](#). His second law is being challenged now in court.

Each province and territory, and the federal government, have passed human rights legislation (called the *Human Rights Code* in both B.C. and Ontario) that guarantees non-discrimination in the provision of services, which includes education services students access at school. Human rights legislation typically applies to all educational services, not only those that are publicly funded. The Ontario [Human Rights Code](#) and the B.C. [Human Rights Code](#) prohibit discrimination on the basis of protected human rights grounds including gender identity and gender expression. Other protected human rights grounds include sexual orientation, race, place of origin, disability, and religion/creed, among others.^{34, 35}

It is important to know that some governments are trying to challenge and limit the gender identity and gender expression rights of students by requiring schools to out them to their parents. Please refer to [Chapter 1](#) for more information.

As of spring 2025, the Saskatchewan government has passed a law to specifically override the *Charter* and the Saskatchewan *Human Rights Code* in order to force schools to out trans students to their parents before the school will use their chosen name and pronouns. As explained above, this harmful law is currently being challenged in court.

Alberta has passed three discriminatory laws that impact students: one which requires that trans students be outed to their parents before their chosen names and pronouns can be used by school staff, one which limits participation in competitive women's sports to girls who were assigned 'female' at birth, and one which limits the kind of medical care that youth can receive.

³⁴ Check the human rights law in your province, as not all jurisdictions prohibit discrimination on the basis of 'gender expression'.

³⁵ Under the B.C. [Human Rights Code](#), a person cannot discriminate in any accommodation, service or facility customarily available to the public on the grounds of Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons. The Ontario [Human Rights Code](#) specifies the following protected grounds in the area of services: age; ancestry, colour, race; citizenship; ethnic origin; place of origin; creed; disability; family status; marital status (including single status); gender identity, gender expression; sex (including pregnancy and breastfeeding); sexual orientation. Other provinces may specify different protected grounds, and may have different grounds for different kinds of discrimination.

There is good news coming out of New Brunswick. A New Brunswick government policy direction (**note:** not legislation) released in 2023 required school staff to out students to their parents before their chosen names and pronouns could be used by school staff. That policy was controversial when it was brought in, and even Conservative cabinet ministers resigned because of it. After the Liberals won the October 2024 election, the policy was changed to incorporate recommendations from the province's child and youth advocate, as well as input from students, families, and the LGBTQ+ community. Today in New Brunswick, students no longer need parental consent to use their chosen names and pronouns at schools.

In Ontario, the Ford government's media comments³⁶ in support of outing students should not be followed. This is because whenever there is a conflict between human rights legislation and government policy (or, in the case, government commentary), the human rights legislation prevails and must be followed.

In fact, **human rights legislation also almost always prevails over other legislation.**

Section 4 of the B.C. *Human Rights Code* says "If there is a conflict between this Code and any other enactment, this Code prevails." Section 47(2) of the Ontario Human Rights Code states:

*Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act.*³⁷

So school boards have to follow human rights law first and foremost, over and above other legislation including legislation such as the [Education Act](#) (Ontario) or the [School Act](#) (B.C.) that govern school board conduct. Human rights legislation always prevails over government and school board policies and other direction.

³⁶ CTV News: 'Parents must be fully involved' in student's decision to change pronouns, Ontario education minister says.

<https://www.ctvnews.ca/toronto/article/parents-must-be-fully-involved-in-students-decision-to-change-pronouns-ontario-education-minister-says/>

³⁷ A similar provision in the Ontario *Human Rights Code* can be found at s. 47(1).

The duty to accommodate

Duty to accommodate means that sometimes it is necessary to treat someone differently in order to prevent discrimination. For example if a student is blind, the school would need to accommodate them by finding a way for them to do tests that doesn't require them to be able to read text.

Human rights legislation itself does not include a lot of instructions. Primarily, it prohibits discrimination and harassment on the basis of the protected human rights grounds.

Some human rights legislation (such as in Ontario) specifically references the duty to accommodate – the obligation to make exceptions to laws, policies, practices, rules, and to alter physical structures in order to avoid discrimination. However, even when that is not specified in the written laws, legal decisions by judges and human rights tribunals tell us that the duty to accommodate is part of the general prohibition against discrimination.

This means that if doing the usual thing or following legislation or government/school policy will create discrimination, **even if unintentional**, on the basis of gender identity, gender expression, or another protected human rights ground, the school must modify its usual practice. It can only avoid the obligation to do this if it would be an “undue hardship” for a school to make such an accommodation. It is very hard to demonstrate that an accommodation is “undue hardship”.

An example of what the duty to accommodate means:

The Ontario Human Rights Commission offers this illustration of what the duty to accommodate means in practice. A fitness club member is in the process of transitioning to identifying publicly as a woman. She no longer feels it's appropriate or safe to use the men's change room but is not yet comfortable using the women's change room. The club manager explores interim solutions with her, such as a privacy curtain or partition in the women's or men's shower and change areas, or access to private staff space. The club is also looking at more universally inclusive options for the future such as building an accessible privacy stall in each change room, and/or a universal single-user gender-neutral washroom with a shower and space for changing. These could be used by anyone who needs them such as a person who is transitioning, a person with a disability, a family, or others. This approach allows a trans member to use the facilities based on their lived gender identity and have options while transitioning. It also provides greater privacy

options for all members. The club also develops a policy addressing the rights of trans members and educates staff about the policy.³⁸

Examples of accommodations that a trans student may request and receive:

- Use of their chosen, rather than legal, first name on school documents
- Access to an appropriate alternative change room space
- Access to an all-gender washroom

It is important to note that the need for accommodation often arises in situations where school boards do not have inclusive design. Under an inclusive design model, things are already set up in a way that is inclusive of transgender students and there is no need to make exceptions to get around discriminatory rules and practices. School boards should always be striving for inclusive design. For more information on inclusive design, please see the LAT [Sample School Board Policy](#).

The duty to investigate/respond

When discrimination, including transphobic bullying/harassment, may have occurred, human rights legal decisions have also recognized an obligation called **the duty to investigate** or **duty to respond**. This obligation flows directly from the prohibition against discrimination that is found in human rights legislation. The duty to investigate and duty to respond are discussed in a section below.

The prohibition against reprisal

Human rights legislation generally prohibits reprisal (also called retaliation) for exercising a human right, although the scope of what is covered by this prohibition varies among jurisdictions.

In Ontario, the *Human Rights Code* prohibits reprisal or threats of reprisal for claiming or enforcing a right under the *Code*³⁹, for example, punishing (or threatening to punish) a

³⁸ For more information on the duty to accommodate, see part 8 of the OHRC [Policy on preventing discrimination because of gender identity and gender expression](#).

³⁹ The Ontario *Human Rights Code* provides in section 8 that “Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing” (R.S.O. 1990 ch H.19).

transgender person for speaking up against transphobia or for insisting that their human rights be respected.⁴⁰

To establish retaliation under the B.C. *Human Rights Code*, the threat or penalty (eg. intimidation, suspension, expulsion, or other bad treatment) must be imposed in response to filing or participating in a complaint to the B.C. Human Rights Tribunal, or because there is an awareness by the board/school that this might occur⁴¹:

Respondent knowledge

At the time of the bad treatment, the respondent must know that the complainant:

- *made a complaint or might make a complaint*
- *was named in a complaint or might be named in a complaint*
- *gave evidence or helped in a complaint, or might give evidence or help*
- *took part or might take part in an inquiry under the Code.*

Examples:

...The complainant told the respondent: "I am going to file a complaint." Or, "You discriminated against me." ⁴²

Even if it does not meet the test for reprisal, negative consequences for advocating for your human rights or the rights of someone else could amount to discrimination contrary to the Ontario or B.C. *Human Rights Code*.

If your school board has a human rights policy, that policy probably also prohibits reprisal/retaliation, and the policy protections could be broader than under human rights legislation. For students in B.C., your school's Code of Conduct must have an explanation that reasonable steps will be taken to prevent retaliation against a student who has made a complaint about the Code of Conduct being breached.

⁴⁰ See page 32 of OHRC's [Policy on preventing discrimination because of gender identity and gender expression](#).

⁴¹ B.C.'s *Human Rights Code* says in s. 43 that "A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, might complain or be named in a complaint, gives evidence, might give evidence or otherwise assists or might assist in a complaint or other proceeding under this Code" (R.S.B.C. 1996 c 210).

⁴² B.C. Human Rights Tribunal: Protection from Retaliation.
<https://www.bchrt.bc.ca/human-rights-duties/retaliation/>

It is important to know about the prohibition against reprisal so you can challenge any steps taken by a school board, school, or individual to punish you for standing up for human rights.

Inclusive schools legislation & government policy

The right of **all** students to a safe and inclusive school environment is fundamental to the delivery of education. In Ontario and B.C., this right is enshrined in education legislation and policy. Please refer to [Appendix 2](#) for a summary and useful links to key Ontario legislation and government policy and [Appendix 3](#) for a similar summary for B.C.

We have also included at [Appendix 4](#) a summary of a legal decision in which the Supreme Court of Canada enforced the concept of inclusive schools by ruling that a school board excluding kindergarten books depicting same sex parents was unreasonable because it violated the principles of secularism, non-discrimination, and inclusion mandated by the *B.C. School Act*.

Ontario

The Ontario Education Act requires school boards to promote the prevention of bullying and to promote a positive school climate that is inclusive and accepting of all students including students of any sex, sexual orientation, gender identity, gender expression, race, disability, etc. Additionally, Ontario government policy mandates and supports the full integration of 2SLGBTQIA+ content and directs that all students must be made to feel safe, included, welcome, and accepted, and must be reflected in the curriculum, teaching practices, physical surroundings, and culture of the school.

Ontario legislation and government policy also give specific direction to school boards in relation to addressing instances of bullying. Sections 300 to 303.3 of the Education Act set out specific protocols school principals must follow in response to instances of bullying and [Policy and Program Memorandum No. 144: Bullying prevention and intervention](#) (PPM 144) also directs school boards on how to address bullying. If you are in Ontario, it is important to review PPM 144 and the above provisions of the [Education Act](#) to help you advocate to ensure that the school board meets its legal obligations in terms of how it addresses transphobic bullying. Additionally, each Ontario school board will have its own policies that flow from PPM 144. However, note that in addition to meeting these legislative and policy obligations related to bullying, school boards also need to adhere to the legal duty to

investigate and duty to respond under the *Human Rights Code* (see [How Schools Should Respond to Transphobic Bullying](#)).

British Columbia

In B.C., the Ministry of Education oversees public schools, as well as independent schools such as private and Catholic schools. There is separate legislation ([School Act](#); [Independent School Act](#)) and separate government policy for public and independent schools.

The B.C. Ministry of Education's [Diversity in B.C. Schools](#) policy aims to ensure that all learners are respected in the public school system. School leaders have a duty to address diversity including gender identity and expression. This requires encouraging understanding, acceptance, and mutual respect and inclusion in order to make school communities more equitable.

The [Safe and Caring School Communities](#) policy is a guide for B.C. public schools to create safe, caring and inclusive learning environments for all students and to have a prevention and intervention strategy to address concerning behaviour. B.C. schools should strive to: develop positive school cultures and focus on prevention; build inclusion; teach, model and encourage positive behaviours which value diversity and defend human rights; respond effectively and appropriately to discrimination; and repair harm and restore a sense of belonging. [Safe and Caring School Communities – Independent Schools](#) is a policy with the same objectives for independent schools.

The [Provincial Standards For Code of Conduct Order](#) requires that public school codes of conduct specifically refer to sexual orientation and gender identity or expression. Codes of conduct must address unacceptable behaviours such as bullying, cyberbullying, harassment, threats and violence, as well as statements about the consequences of these unacceptable behaviours. Your school may have additional statements in its Code of Conduct to further promote a safe, caring and inclusive environment. Under the [Harassment and Bullying Prevention Order](#), independent schools are required to have similar policies.

Note that in addition to meeting the above obligations related to bullying, school boards also need to adhere to the legal duty to investigate and duty to respond under the Human Rights Code (see [How Schools Should Respond to Transphobic Bullying](#)).

The B.C. Ministry of Education has approved the use of [SOGI 123](#), a resource to help schools and teachers build inclusive environments for students of all sexual orientations and gender identities. SOGI 123 includes sample policies, curriculum resources, and professional development resources.

Publishing, issuing or displaying hate

When hate happens in school, or is perpetrated by a student or school employee and impacts the school environment, the school board has a human rights obligation to address it. The failure to do so can amount to (further) discrimination.

However, in addition to prohibiting discrimination in the provision of services and other protected social areas, human rights legislation in B.C., Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, and Nunavut allows human rights tribunals to address certain hateful publications or displays by anyone (ie. it is not restricted to service providers, workplaces, unions and housing providers). See:

- Section 7 of the B.C. [Human Rights Code](#)
- Section 3 of the [Alberta Human Rights Act](#)
- Section 14 of the [Saskatchewan Human Rights Code](#)
- Section 18 of [The Human Rights Code](#) of Manitoba
- Section 11 of the Quebec [Charter of Human Rights and Freedom](#)
- Section 7(1) of the New Brunswick [Human Rights Act](#)
- Section 7(1) of the Nova Scotia [Human Rights Act](#)
- Section 12(1) of the Prince Edward Island [Human Rights Act](#)
- Section 19 of the Newfoundland and Labrador [Human Rights Act](#)
- Section 13 of the Northwest Territories [Human Rights Act](#)
- Section 14 of the Nunavut [Human Rights Act](#)

For more information on hate speech and publications, see [Chapter 2](#).

Privacy rights

Although human rights legislation protects students from being inappropriately outed by schools, privacy rights are also supportive of the right to confidentiality.

The United Nations [Convention on the Rights of the Child](#) (CRC) has been ratified (agreed to) by the Canadian government. Although it is not a law in Canada, it is used as a tool to help us interpret our laws and policies.

Article 16 of the CRC says that no child shall be subjected to arbitrary or unlawful interference with their privacy, and that a child has the right to the protection of the law against such interference or attacks.

It may be possible to sue someone in court for a violation of privacy. There is some judge-made law ("common law") on this issue. In B.C., the [Privacy Act](#) creates a right to sue for a breach of privacy.

Misgendering as a form of child abuse

There are family law decisions that indicate that parental refusal to respect a child's self-identified gender identity is harmful, is not in the best interests of the child, and may be a form of "family violence".

See [Ireland v. Ireland, 2007 ONCI 11](#), [A.B. 2019 BCSC 254](#), [G.K. 2015 ONCI 307](#), [G.M. 2021 NSSC 186](#).

Although these decisions are not about school board conduct, they are useful in articulating what is considered mistreatment of children. Not respecting someone's gender identity is a form of abuse.

Bubble zone legislation

As explained in [Chapter 1](#), B.C. has bubble zone legislation to protect schools from protests.

Transphobic bullying

In this section, we talk about situations where a student is being targeted by transphobic bullying. In the next section, we talk about situations where a student (or group of students) is experiencing discrimination because of policies or practices at their school.

Bullying is behaviour that is deliberate and which targets particular people or groups. It is more specific than **discrimination**, which can be interpersonal behaviour, but can also include how school structures and practices adversely affect some people, which is typically unintentional. Bullying is more like the word harassment. Both bullying and harassment

refer to targeted behaviour. Often, bullying exercises power: the power to make a member of a marginalised group feel like they are unsafe, unwelcome or do not belong. Bullying can also be behaviour that causes direct harm. Bullying can be:

- **Verbal:** for example, name calling, teasing, inappropriate comments, taunting, or threats;
- **Social:** for example, leaving someone out, spreading rumours, telling other students not to be friends with someone, embarrassing someone, doxing someone;
- **Physical:** for example, hitting, spitting, taking or breaking a possession, making mean or rude hand gestures.

Transphobic bullying is deliberate behaviour targeting a person because they are transgender, because they are taking action to support transgender people or because they do not conform to gendered expectations and/or are misperceived as or suspected to be transgender. They might be targeted for standing up to a bully directly, or if they are an adult, because their role includes meeting a school or board's obligations under human rights laws. Even school trustees—people at the top of a school board—can experience transphobic bullying. You can learn more about these people's experiences of transphobic bullying and about the term 'transphobia' in the previous chapters.

People who perpetrate transphobic bullying against students can be other students, but they can also be teachers, principals, parents/guardians of other students, or people in the community or online. Schools are generally responsible for addressing transphobic bullying and harassment among school community members if it impacts the school environment, even if the conduct takes place outside of school or on social media.

Examples of transphobic bullying experienced by students

Here are some examples of transphobic bullying that target students, whether a particular student or transgender/gender non-conforming students as a group:

- Preventing someone from using a washroom through physical violence, verbal abuse or threats of violence, or kicking someone out of a washroom or change room
- Referring to someone with slurs, taunts or disparaging remarks related to their gender identity or gender expression
- Doxing someone (publicly sharing their private personal information such as name, address or contact information with the intent to cause harm)

- Deliberately outing someone as transgender
- Deliberately misgendering someone (intentionally calling them by the wrong pronouns, their old or 'dead' name, or gendered terms or titles that do not match their gender identity)
- Creating or circulating memes or other online content that target someone's gender identity or gender expression
- Excluding someone because they are transgender (for example, keeping someone off a particular sports team or excluding them from a school-sanctioned event or club)
- Defacing walls or other school property with messages, etc. that target transgender people, whether one individual or transgender people in general, or defacing/removing flags, posters or other affirming material related to 2SLGBTQ+ communities
- Leaving when a transgender student's pronouns (etc.) are discussed or when classroom discussion or curriculum content is inclusive of trans identities (see [Appendix 1: Discriminatory Exemptions from 2SLGBTQIA+ Content](#))

A student who stands up for a transgender friend may also experience transphobic bullying themselves, and because transphobia is the reason they are being bullied, this chapter also applies to these situations.

You will notice that each of the above examples involves particular people (bully or bullies) doing deliberate things that enact transphobia and make the school a hostile place for people who are transgender or gender non-conforming.

If you don't recognize your particular problem in this section, it may be because your problem is not transphobic bullying, but discrimination related to gender identity and/or gender expression-based discrimination at school.

How schools should respond to transphobic bullying

People in positions of power, such as teachers, school principals, school superintendents, and directors of education cannot ignore transphobic bullying. Rather, they must take appropriate action to address it. The failure to do so is called **condonation**, and is a human rights violation.

This means that once they witness or receive a report about transphobic bullying, there is a duty to investigate it to find out what exactly happened, there is a duty to appropriately address it, and there is a duty to tell the person(s) directly impacted by it how it was addressed.

In a B.C. case called [*Jubran v. School District 44*](#), Azmi Jubran experienced homophobic bullying throughout high school. Although the school generally addressed each incident of bullying in accordance with an anti-bullying/progressive discipline framework and disciplined the offending student, and even did some education in the school, the steps the school board took were not effective in preventing other students from taking up the bullying, and the bullying continued. It was determined that the school board failed to meet its obligation under the B.C. *Human Rights Code* to maintain a discrimination-free environment.

In practice, school officials have a tendency to follow their anti-bullying protocols, but they may not be aware that if the bullying relates to a protected human rights ground, including gender identity or gender expression, they must also meet their obligations under human rights legislation, which includes being accountable to the person who was targeted by the bullying (letting them know what is being done and what has been done to address it), and taking effective action to address the bullying and to prevent it from happening again.

Here are some characteristics of what a school's response should be when transphobic harassment and/or bullying have occurred.

If you are not seeing these things, your school and school board may not be meeting their obligations under human rights legislation and/or their equity obligations under government or school board policy:

- **Stop & interrupt:** School staff must stop, intervene and address incidents of transphobic bullying that happen at school or are perpetrated by a member of the school community and impact the school environment, as well as incidents of reprisal.
- **Tell:** The duty to respond arises when a school staff (e.g., teacher, principal, superintendent) knows or ought to know that a transphobic bullying incident has occurred. So be sure to tell a trusted adult and make sure you or the trusted adult tells the school principal. If a school staff is aware of a transphobic bullying incident, they should tell the school principal as there are certain steps that only the school principal can take to address it.

- **Protect:** Steps must be taken to prevent transgender students from experiencing further transphobic bullying
- **Investigate:** When the school principal is aware that transphobic bullying may have occurred, they should conduct an investigation to determine what happened and decide if what happened amounts to a human rights violation. If so, they should implement appropriate corrective measures which could be a combination of discipline and/or education (see below).
- **Be Accountable:** The duty to respond requires that the transgender student who was targeted be told the result of the investigation and, if the investigation found that there was a human rights violation, what is being done about it.
- **Address/Educate:** An appropriate response should include an effective plan of action to prevent further incidents, likely including education. If a student has repeatedly engaged in transphobic bullying, transgender students should be protected from further such encounters with that student.
- **No Condonation:** If a person in a position of authority, such as a teacher, principal, or superintendent, fails to appropriately address transphobic bullying as required under human rights legislation, the failure could amount to condonation contrary to human rights legislation.
- **No Transphobia:** School staff are prohibited from engaging in transphobic bullying.⁴³

This section has described what *should be happening* if a student is experiencing transphobic bullying. If these things are not happening, the next section suggests action steps.

Why might a school *not* address transphobic bullying?

The purpose of this section is to help you force the school or school board to take decisive action to respond to transphobic bullying and/or to prevent further transphobic bullying. We wager that you have picked up this handbook because such action is not being taken.

In the previous section, you probably learned that what's happening to you or to the student you're supporting is wrong, beyond any doubt. Transphobic bullying is against the

⁴³ Inspired and informed by the Toronto District School [Board Expected Practices for Understanding, Addressing and Preventing Discrimination](#).

law, because the adults employed by the school have a legal duty to respond to and prevent it.

However, this doesn't always happen, for several reasons.

Sometimes school staff and administrators don't know that a behaviour meets the definition of bullying (or harassment), usually because they themselves haven't experienced it before, or they have not yet supported a transgender student so don't understand what transphobia can look like. Unfortunately, many things we now recognize as transphobic bullying – like excluding or mocking someone because they look, sound, or behave differently than other students – have been thought of as 'normal behaviour' for a long time.

Another reason why school staff and administrators may not take action to respond to or prevent transphobic bullying is because they themselves hold transphobic beliefs and are reluctant to punish others who hold the same beliefs. A teacher or principal's personal beliefs – even if informed by their religion – are irrelevant. Under human rights laws, no personally-held belief can prevent a school staff member from doing their job, which includes responding to and preventing transphobic bullying. If a staff member or administrator is not taking action for these reasons, this is a human resources issue as they are not able to carry out the duties associated with their role in a school.

Another reason why school staff and administrators might not yet have taken action on a particular incident or pattern of transphobic bullying is because they are afraid of becoming targets themselves. Standing up to transphobic bullying can mean experiencing it from colleagues, parents, community members or anti-trans activists, whether locally or online. A teacher who does their job by defending a transgender student against deliberate misgendering by initiating their school board's anti-harassment policy against the bullying student(s) can be targeted and harmed. However, **it is not the student's responsibility** to know or take this into account, but the school principal's job to keep the teacher safe from repercussions from doing their job as a school employee.

Transphobic bullying is also not permissible on religious grounds.

Transphobic bullying still needs to be addressed when the person doing the bullying asserts religious beliefs as a rationale for their conduct. In [*Alexander v. Renfrew County Catholic District School Board*](#), the Ontario Superior Court of Justice upheld a disciplinary committee's decision to confirm a principal's decision to suspend and exclude a student

who had bullied trans students including: deadnaming and using the wrong pronouns; using derogatory terms and making derogatory comments; and using derogatory and inflammatory language to challenge trans students' use of the washroom of their choice. In the words of the committee:

While individuals are entitled to their religious beliefs, opinions, and views, what they are not entitled to do is act in a manner that disrespects, discriminates, insults, denigrates, harasses, bullies, or otherwise creates an unsafe environment for any person in the school. Beliefs, opinions, and views, no matter how genuinely held, cannot be used to justify treating any individual with disrespect or in any way that devalues them or makes them feel unsafe.

There is no grey area. Transphobic bullying, under the law, must be addressed, no matter whether school staff or administrators don't understand what is happening, hold transphobic beliefs, fear being targeted themselves, or when religious views are asserted as a rationale for mistreatment.

Gender identity and/or gender expression discrimination

In this section, we turn to a different kind of problem experienced by transgender and/or gender non-conforming students in schools: gender expression and gender identity (GEGI) discrimination. This can look and feel very different from being targeted by transphobic bullying, but that doesn't mean GEGI discrimination is not hurtful.

Like transphobic bullying, GEGI discrimination is illegal.

However, **GEGI discrimination is not necessarily targeted and clearly intentional behaviour from one person to another.** GEGI discrimination can happen without anyone intending for it to happen. It can happen because the school staff have always done X or Y, don't consider that people there are transgender, may transition gender, or may not be gender-conforming in their gender expression (e.g., not a typically feminine girl or typically masculine boy). In fact, *many* things that schools have done in the past now qualify as GEGI discrimination. This means there is a lot of work to do to change things like school policies and practices that some people may not even think are related to gender or transgender people. You have probably come to this section because you or a student you are supporting have bumped up against one of these policies or practices.

Examples of GEGI discrimination experienced by students

Sometimes it's easier to describe what non-discrimination looks like, or describe a school where gender identity and gender expression discrimination have been addressed already.

The Ontario Human Rights Commission (OHRC) Policy on preventing discrimination because of gender identity and gender expression gives a good overview of what gender identity and gender expression rights should look like in practice.⁴⁴ Section 13.8 focuses specifically on the education setting and outlines what non-discrimination looks like in schools on these grounds.

The following table sets out what you **should** be experiencing in your school (from the OHRC policy) in the left-hand column. In the right-hand column are counter-examples or forms of GEGI discrimination:

Non-Discrimination	Counter-Examples (Discrimination)
Students are addressed by their chosen names and gender pronouns no matter what is written in their school record or on their birth certificate.	Students are consistently misgendered.
Official records, including attendance lists, reflect a student's lived gender, chosen name and gender pronouns.	Students (or their parents) are told they are not allowed to change the name on their school record or attendance lists.

⁴⁴ Ontario Human Rights Commission: Policy preventing discrimination because of gender identity and gender expression.
<https://www3.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression/13-preventing-and>. Although this policy does not have the force of law, the Ontario Human Rights Tribunal can be obligated to consider this policy when interpreting and applying the Ontario *Human Rights Code*.

Trans students access washrooms and other facilities in accordance with their lived gender identity.	<p>Transgender boys or girls are prevented from facilities that align with their lived gender identity.</p> <p>Non-binary students are not provided with access to all-gender facilities such as a single-user washroom or changing space.</p> <p>Gender inclusive or single-user facilities are used to force or coerce transgender or non-binary students out of gendered facilities.</p>
Trans students take part in health and physical education classes in accordance with their lived gender identity.	<p>Transgender and/or non-binary students are made to take part in health and physical education classes according to their assigned sex.</p> <p>Non-binary students are given no option but to take gender-segregated health and physical education classes.</p>
Trans students play on school sports teams in accordance with their lived gender identity.	<p>Transgender girls and boys are required to play on a team that aligns with their assigned sex.⁴⁵</p> <p>Transgender and/or non-binary students are told they may not play sports.</p> <p>There is no pathway for non-binary students to play on a sports team.</p>

⁴⁵ In Alberta, students may only play on a school sports team that aligns with their assigned sex. This is clearly discriminatory and is being challenged in court at the time of initial publication.

<p>Trans students who require accommodations in situations where the status quo is discriminatory are provided with accommodations in a timely manner.</p>	<p>Trans students who require accommodations (e.g., access to a single-user staff washroom, privacy barriers in gendered changerooms, single-room occupancy on school-sanctioned trips, etc.) are not provided with accommodations, the process is inhumane and invasive, or the process takes too long.</p> <p>Trans students are unable to access information about accommodations, this information is withheld when requested, or trans students are turned away when requesting accommodations.</p> <p>Trans students are disciplined for taking action to manage their exposure to GEGI discrimination (for example, they are repeatedly late to health and physical education class because they change in the all-gender washroom on the other side of the school, or they are seen to 'talk back' to a teacher who misgenders them by offering a correction).</p>
<p>Trans students' transgender status is kept confidential by school staff and is not communicated by staff unless staff have a "need to know" to fulfill a specific accommodation need, or if the student requests the information is shared.</p>	<p>Trans students are outed to others without their consent, including to their parents/guardians.⁴⁶</p>

⁴⁶ In Alberta and Saskatchewan, parents/guardians may be entitled to know if their student has requested that school staff refer to them by a different name or gender pronouns for reasons related to gender identity. This is clearly discriminatory and is being challenged in court in both provinces at the time of initial publication.

All students participate in teaching and learning about gender identity, gender expression and sexual orientation as part of the school's responsibility to provide an environment free from related forms of discrimination.	Students are allowed to leave the classroom when these topics come up, whether in planned lessons or unplanned conversation. ⁴⁷
(If applicable) School dress codes are flexible and do not require typically gendered clothing, hair styles, etc. for students based on their assigned sex.	<p>School dress codes have separate rules for girls and boys.</p> <p>Students who are transgender and/or gender non-conforming are disciplined for not obeying the school dress code when they dress (etc.) according to their gender identity and/or gender expression.</p>
<p>(If applicable) Trans students choose their housing assignment based on their lived gender identity and not their assigned sex.⁴⁸</p> <p>Note: this should also apply for overnight field trips. For more information on field trips, see the LAT Sample School Board Policy.</p>	Transgender girls and boys are required to live in a residence that aligns with their assigned sex, or otherwise singled out without their consent and made to live separately from other students of their gender identity.

There is much more to know about how a school board can set policies and support practices that truly minimize the potential for GEGI discrimination. The [Sample School Board Policy](#) was co-written by Ros Salvador for school boards to use as a model. There are

⁴⁷ In Ontario, elementary students can be exempted from lessons on Human Development and Sexual Health in elementary Health and Physical Education upon their parent's request, and from any guest speaker presentation including about gender identity, gender expression or sexual orientation. However, we are hearing pervasive reports of students being allowed to skip all discussion or instruction or school-wide events on these topics, which is not permitted and may constitute GEGI discrimination or condonation of discrimination. See [Appendix 1](#) for more information. In Alberta, students must be 'opted in' by their parent(s) to any planned lessons about gender and sexuality. Both provinces' requirements may be discriminatory including in their unintended impacts, but they have not been challenged in court at the time of publication.

⁴⁸ The OHRC also encourages institutions to have gender inclusive housing options where students share a facility regardless of their sex or gender identity.

many more examples in that model policy of GEGI discrimination and of what schools can (and should) be doing to address or prevent it.

Even in provinces like Alberta and Saskatchewan where conservative governments have legislated discrimination against transgender students (see the previous section and other chapters in the handbook), discriminatory laws can be followed in ways that seek to minimize harm. A resource for school boards seeking to do less harm while required to discriminate against transgender students is www.nofornow.ca.

How schools should respond to GEGI discrimination

When school staff are informed that GEGI (or any other form of) discrimination is taking place, they must take action.

Here are some characteristics of what a school's response should be when they become aware that GEGI discrimination is happening or may have taken place. If you have informed school staff about the discrimination and you are not seeing these things, your school and school board may not be meeting their obligations under human rights legislation and/or their equity obligations under government or school board policy. This section is similar to the section on [How Schools Should Respond to Transphobic Bullying](#) but contains important differences due to how GEGI discrimination takes place.

- **Stop and Tell:** School staff must stop discriminating. This might mean no longer requiring that a student participate in a discriminatory process or not enforcing a discriminatory rule, removing any consequences that the student has wrongly incurred when attempting to manage harm caused by the discrimination they have experienced, clearly communicating that they understand that discrimination is occurring or may be occurring, and – if the informed staff member is not an administrator – explicitly stating that they will bring this issue to the immediate attention of an administrator. Similarly, school staff must stop and intervene in any action of reprisal perpetrated by a member of the school community and impacting the school environment, as well as report any action of reprisal to an administrator.
- **Protect:** Steps must be taken to change policies and practices to implement inclusive design to prevent other transgender and/or gender non-conforming students from experiencing the reported GEGI discrimination, and to prevent the student who raised the issue from experiencing it in the future (i.e., the duty to accommodate) while a lasting solution is being explored.

- **Investigate:** When the school principal or board is aware that GEGI discrimination may have occurred, they should conduct an investigation to determine what happened and decide if what happened amounts to a human rights violation. If so, they should implement appropriate corrective measures which could be a combination of discipline and/or education (see below).
- **Be Accountable:** The duty to respond requires that the transgender and/or gender non-conforming student who experienced the GEGI discrimination be told the result of the investigation and, if the investigation found that there was a human rights violation, what is being done about it. The student should be actively engaged in a process of identifying and implementing solutions, and monitoring progress on the solutions as time goes on.
- **Address/Educate:** An appropriate response should include an effective plan of action to prevent further GEGI discrimination, likely including education.
- **No Condonation:** If a person in a position of authority, such as a teacher, principal, or superintendent, fails to appropriately address GEGI discrimination as required under human rights legislation, the failure could amount to condonation contrary to human rights legislation.⁴⁹

Why might a school *not* address GEGI discrimination?

The purpose of this section is to help you force the school or school board to make changes to policies and practices that discriminate on the grounds of gender identity and/or gender expression. We wager that you have picked up this handbook because such changes are not being made.

Like transphobic bullying, GEGI discrimination is not only wrong but against the law. Unlike transphobic bullying, however, the actions that schools must take in order to address GEGI discrimination may not be things that are a teacher's or other staff members' responsibility when they happen. In the previous table, you saw that GEGI discrimination can be about things like class assignment, dress code, washrooms and changerooms, room assignments in overnight fieldtrips, and being consistently misgendered with no progression over time (however, for intentional misgendering, see above under Transphobic Harassment)). Teachers can have roles in these things, but often action is needed at higher levels of a

⁴⁹ Inspired and informed by the Toronto District School Board [Expected Practices for Understanding, Addressing and Preventing Discrimination](#).

school or school board to prevent or address discrimination; think principals, superintendents and board trustees (more on how to bring your issue to the attention of these people will follow in the next section).

Sometimes GEGI discrimination isn't addressed because it just doesn't stand out to school staff or administrators as a problem but 'what we have always done around here.' Schools are busy places, and making change to familiar routines, forms, or processes can be challenging and time-consuming. This alone can deter schools and school boards from taking action to prevent or address discrimination.

Another reason is that the permission required to make a change is above the authority of school staff. For example, the first transgender student to request a change in their gender marker on school records or to request 'X' instead of M or F was probably told that school staff couldn't do that in the school's online system because it was made by an external software company, or because the program is bought and managed centrally by the school board. This may be true, but that student would likely have won if they took their discrimination complaint to a human rights tribunal because none of these reasons meet the test of 'undue hardship' (see [Supporting trans students](#)): something that can't be asked of an institution. In other words, just because something is hard or time-consuming to change, it still likely needs to be fixed. Change simply must be made in most cases.

Another reason that GEGI discrimination may not be addressed is transphobia. This is unfortunately a time when anti-transgender individuals and organizations are becoming more and more emboldened to attack and intimidate schools and school workers who are doing their jobs (which includes preventing and addressing GEGI discrimination). School staff or even school boards may fear backlash when they make changes to prevent and address forms of discrimination primarily experienced by transgender people, which can mean altering aspects of school life that feel personal to many people such as changing rooms or washrooms. In addition to fearing transphobic backlash, we are sorry to say that some people who work in schools hold transphobic beliefs. However, this has no relationship whatsoever to their responsibility to address and prevent GEGI discrimination – once again, like we mentioned in the transphobic bullying section, if a person's transphobic beliefs mean they are not doing their job, this is a human resources issue and not a shield from responsibility.

There is no grey area. Gender expression and/or gender identity discrimination, under the law, must be addressed, even if school staff or administrators don't understand what is happening, fear backlash, or hold transphobic beliefs.

What to do when bullying or discrimination continues or is unaddressed

This section addresses the following kind of situation: a student has been targeted by transphobic bullying or come up against GEGI discrimination at school and the adults in charge are not addressing it. This may be due to the reasons described in a previous section. Or, perhaps the issue was initially addressed, but the response hasn't been effective because it has continued or gotten worse. There are many reasons why a response might be ineffective, but it remains the school's responsibility to keep on addressing the issue even if initial strategies have not worked. When a school staff member, administrator or superintendent (more on these roles below) does not respond to appropriately address transphobic bullying or GEGI discrimination, that is called condonation, which is a human rights violation.

In this situation, there are three strategies: policy connection, documentation and escalation. Each of these works well if a student is supported by an adult, whether within or outside of their family.

Policy connection and **documentation** are strategies we use to prepare for escalation: for a meeting with people who have more authority than those not currently doing anything or enough about transphobic bullying.

Policy connection

You have already learned that school staff have no choice but to respond to transphobic bullying *and* prevent and address GEGI discrimination, regardless of lacking understanding, holding anti-trans personal beliefs, or being concerned about backlash. This is true under the law (such as human rights laws), but it is also true because school boards typically have policies that require staff to take action against transphobic bullying and GEGI discrimination.

A policy is a document authored by a school board which guides people who work in schools when they encounter specific situations.

There are policies about responding to harassment or bullying (and sometimes separate policies on each one), about equity and diversity, about human rights, and sometimes directly about gender identity or gender expression—these are often called ‘supporting transgender students’ or similar. The phrase **transphobic bullying** might not be used in the board’s policies, but remember that this is **harassment**, **bullying** or interpersonal **discrimination** because someone is transgender, because of their **gender identity** and/or their **gender expression**. These bolded words should be in school board policy documents, in some combination.

People who work in schools may not know that something they have always done is discriminatory on the grounds of gender identity and/or gender expression (for example, assigning student hotel rooms on an overnight field trip by assigned sex alone). People who work in schools may also not know that their school board policies direct them to take action to intervene in transphobic bullying, or that the examples we shared in the [Transphobic Bullying](#) section meet the standard of (are as bad as) what an anti-harassment or anti-bullying policy document is addressing.

For example, it’s uncommon for school staff to clearly understand the difference between someone making honest mistakes with a trans person’s pronouns (which can be discrimination if there is no change over time), and someone deliberately misgendering a trans person. While each of these should be addressed, the second one is transphobic bullying and certainly triggers a teacher’s duty to act in accordance with the board’s anti-harassment or anti-bullying policy. But the line between these two kinds of misgendering can be blurry for people without trans experience, or who are reluctant to enforce an anti-harassment policy due to fears of backlash. Finding your school board’s policies and matching your issue to what those policies say is a key strategy for getting school or school board staff to take action, if they are not already, or to take more action.

If you are in an Ontario school board, you can find your school board’s relevant policies at www.gegi.ca. If you are not in Ontario, use an internet browser. Enter your school board (not school) name, and the **bolded** terms in the paragraph above. Look for a document that is official - boring, no images or diagrams - and called ‘policy,’ ‘procedure’ or ‘regulation.’ This kind of document carries the most authority because it was approved by a school board’s governing body and is a form of ‘law’ within that board’s schools. However,

you might also find a 'guideline' or other supporting resource which teaches school staff about gender diversity, gender expression and/or gender identity. You can still connect your experience to what these documents say teachers or other staff should or should not do. The point is to be able to show school staff that there are already rules for your situation at the level of your school board, and that these rules are not being followed. In 2025 in Canada, it is far more likely that this is what is happening as opposed to a school board not having made these rules already. This is because of decades of activism by transgender people and our allies, including in your school board but also at the provincial and federal levels where human rights laws are made.

Lastly, we recommend looking at the OHRC [Policy on Preventing Gender Identity and Gender Expression Discrimination](#), and making connections between what this policy says and what you are experiencing. In Ontario, this policy is a higher authority than any document that your school board has created.⁵⁰ And, even if your school board has no document, the OHRC policy is always there. If you don't live in Ontario, the OHRC policy may also be helpful because human rights laws across the country are similar.

When you escalate (see [Escalation](#)), you will be able to show the person you are meeting with that you understand your rights, and that the school is not doing their job according to the policy or policies you have found.

Documentation

There is a rule in legal practice that 'the best evidence wins.' Although we sincerely hope that your situation is resolved long before you might choose to bring your case to a human rights tribunal or sue the school board in court (more on this below), it is useful to prepare as if this is the result you have in mind. And in a tribunal or court, the person who has the best evidence is likely to be seen as the person with the most accurate account of what happened.

It's extremely important to keep track of each event of bullying or discrimination: where and when it happened, who was there or witnessed it, what took place, and whether anyone did anything to address it. You can use a spreadsheet, or you can download the GEGI [Self-Advocacy Log](#) which is designed to help a supporting adult track these difficult experiences with the student most affected by them.

⁵⁰ See here for an explanation of the legal authority of OHRC policies:
https://www3.ohrc.on.ca/en/our_work/advocacy/policies-and-guidelines

Log entries should be written as soon as possible, but it's okay to 'back date' or begin with older entries once you begin logging. Make sure they are organised in the order in which they happened. The Self-Advocacy Log also invites entries about communication related to the bullying or discrimination, such as telling the principal if the behaviour is not being addressed by a classroom teacher, or that your name is still not changed in attendance lists. You can also log meetings about the issue, including action items committed to in the meeting.

This is an example of what a filled-out Gegi Self-Advocacy Log might look like, and includes events from the [Self-Advocacy Module](#) "Darcy the Dragon Tamer," a self-guided choose-your-adventure story that teaches students in Grade 6 and up about gender identity and gender expression self-advocacy strategies.



My Self-Advocacy Log

When you are self-advocating, it's a good idea to keep track of what is happening. This includes incidents that you think may be gender identity and/or gender expression discrimination, or steps in your advocacy journey, like emails and meetings.

This tool will help you keep track. If you have already found a supporting adult (see Step 3: Find Your Team on www.gegi.ca), share a copy with them and ask if they can help you to fill it out, and remind you to fill it out! You can also use this by yourself if you need to, of course.

Rows 2-4 are **examples** from the Gegi self-advocacy module DARCY THE DRAGON TAMER.

	What are you logging?	When did it happen?	Where were you when it happened (if relevant)	Who else was part of it?	What happened? Try to tell a story with a beginning, middle and ending.	How did you feel?
1	Misgendering	Many times on October 17 th	In class with Ms. Murphy	Larry, Sheba, everyone else in my class, Ms. Murphy	I asked Larry to start using my pronouns at school today. Other kids heard him and asked us about it. Sheba made a big deal about it every time she made a mistake and we corrected her.	It was embarrassing. My face was hot and I couldn't concentrate.
2	Meeting with Ms. Murphy	October 19 th	Ms. Murphy's class	My parents, Ms. Murphy	We told Ms. Murphy about my pronouns and that I'm nonbinary. She said that we should have a meeting with the principal about it to let all my teachers know.	Ms. Murphy was nice and I felt like she listened to me.
3	Misgendering	October 20 th	Ms. Murphy's class	Everyone in my class, Ms. Murphy	Kids keep misgendering me. Ms. Murphy remembered when Larry reminded her (that my pronouns are they/them). Ms. Murphy apologized to me for getting it wrong once when she called "boys!" to get Larry and me to pay attention.	Embarrassed When Ms. Murphy corrected her own mistake ("boys") I felt better.
4	Email to Mr. Calderon	October 23 rd		My parents, Mr. Calderon	My parents hadn't heard from Mr. Calderon yet about a meeting with my teachers. Ms. Murphy said	Fine

This www.gegi.ca tool supports students in meeting expectations in the Gegi Curriculum: A4. Tell a story about a time I experienced discrimination or harassment because of either my gender expression or my gender identity. C3. Make detailed oral or written notes as soon as possible after I experience discrimination or harassment, or after a meeting. C4. Keep notes and important documents organized by date. D5. Keep track of what my school is doing and has agreed to do, and follow-up regularly. | v2 May 2022 | Gegi.ca contains general legal information and is not intended to be used as legal advice for a specific legal problem.

When you escalate, you will be able to show the person you are meeting with a clear record of incidents that have not been adequately addressed.

Escalation

Policy connection and documentation are how you get ready to escalate. Escalating means asking for and attending meetings with people who have more power and authority than the ones who are not taking action already, or who aren't doing enough to stop the bullying or make changes to address the discrimination. You will be most successful at forcing action if you have evidence (documentation) and, using the school board's own words, can say why this should not be happening (policy connection).

Step 1: Identify who to meet with

The first step in escalation is identifying the best person to meet with.

Sometimes, we prepare for a meeting even with the school principal using documentation and policy connection. We might do this if we know the principal has not taken action in past similar situations, if we know that the principal holds anti-trans beliefs or is otherwise not a safe person to go to for help whether for the supporting adult or the student.

If the principal is not a safe person or if you have already gone to the principal but they took no or not enough action, your next step is to select a person to contact at the school board level. School boards have hierarchies. Each position in the hierarchy is explained in the Gegi [Who's Who](#) resource, which we have reproduced on the following pages. You can use this resource to decide who to contact.

If you do not see any action, if your emails are unanswered (more on emails below), or if people do not do what they say they will, the person who you meet with might change:

- If the school principal does not appropriately address your situation, is not a safe person to tell or is the person who perpetrated the harassment or who is actively condoning⁵¹ the discrimination by saying they cannot or will not do anything about it, get a meeting with the school superintendent.
- If the superintendent does not appropriately address your situation or is not a safe person to tell or is the person who perpetrated the harassment or who is actively condoning the discrimination by saying they cannot or will not do anything about it, contact your school board's human rights office if there is one, or alternatively, the board's Director of Education.

⁵¹ You can learn about the term **condonation** in the [Transphobic bullying](#) and [Gender Identity and/or Gender Expression Discrimination](#) sections of this chapter, which is what happens when a school board (etc.) does not act in response to discrimination or harassment.

- If the Director of Education does not appropriately address your situation you can try contacting a School Trustee (elected person who sits on the school board's governing body) if you know of one who is supportive of 2SLGBTQ+ communities. In fact, you might contact a local community organisation for help figuring that out.

Students and parents in B.C. also have the right to appeal to their board of education when they are unable to resolve issues by talking to a teacher, principal and staff at the school board office. Under the *School Act*, students and parents can make an appeal when a decision made by a board employee significantly affects the health, education or safety of a student. If you are not able to resolve matters in your appeal to your board of education, you may apply to the superintendent of appeals if your issue is related to bullying behaviours. For more information about the board of education and superintendent of appeals process, please see [Student disputes and appeals](#).



School Who's Who

When you are experiencing something at school which could be gender expression discrimination or gender identity discrimination (<https://www.gegi.ca/definitions/>), it's important to know who you can go to for help (<https://www.gegi.ca/talk-to-someone/>) and who has the authority and responsibility to make change happen. Use this resource to figure out who these people are in your school and school board.

People who can join your team



Hi there! I am a **teacher**. My job is to teach curriculum content and support student learning. It's also my job to provide a classroom free from gender expression or gender identity discrimination, and to act when these things are happening. I might be someone who you feel you can talk to, and I may be able to help you self-advocate by suggesting the best person to meet with, or helping you get ready for or going with you to meetings with the vice-principal or principal. I probably know about resources in the local community that can also support you, but I often send students to their school board page on www.gegi.ca because that info is also there!

Which teachers at school do you feel like you can talk to?

Why hello! I am a **school counselor**. I am a teacher too, but I don't teach in a classroom. I support individual students with their educational, academic, and career planning needs. I'm here to talk if you are having trouble with your academics, which can definitely happen if you are experiencing discrimination. I know a lot of resources and supports that can help, and I can connect you with the School Social Worker when they are here.

Who is the right school counselor for you to talk to at your school?



This www.gegi.ca tool supports students in meeting expectations in the Gegi Curriculum: **B1**. Differentiate between a school and a school board. **B2**. Differentiate between the jobs of a teacher, counselor, school social worker, vice principal, principal, superintendent, and Director. **B4**. Describe the reporting process for incidents of discrimination and/or harassment in my school board, including the different roles in this process. **D1**. Identify the adults in my school and school board who are responsible for addressing discrimination and harassment. **D2**. Identify a key adult in my family or at my school who can support my self-advocacy. The Gegi Curriculum was developed with experts on gender diversity, law, and education. | v3 July 2023 | Gegi.ca contains general legal information and is not intended to be used as legal advice for a specific legal problem.



Greetings! I am a **school social worker**. I am a trained mental health professional and we can talk one on one if there are things happening that are hurting you, including discrimination. I help students, parents/guardians and school staff provide mental health support, individually and sometimes in groups. I'm different from the school counselor because I focus more on mental health and social or emotional needs, and less on academics. I can also connect you with service providers outside of school. I often have more than one school to support, and am not always there. Ask the school counselor how to find me.

Who is the school social worker assigned to your school?

Hello! I am the **equity lead** for your school and all the other schools in your school board! I might be called an equity and inclusion consultant, or a diversity or human rights lead. I support students, teachers and administrators in every school to prevent discrimination and make sure, when it happens, that school staff have what they need to respond in a good way. I might know about other peoples' experiences in the school board with things like pronouns and names, changerooms or washrooms, and playing sports. This means I know what strategies have worked and who else we can talk to. At any stage of your advocacy journey, I can help.

Use the school board finder at www.gegi.ca to find contact information for an equity lead in your school board.



People with power to make change

Nice to meet you! I am a **vice-principal**. I'm part of the school administration, and I support the principal in managing all aspects of our school operations and community. Sometimes I'm responsible for students in a particular grade or grades, and sometimes I have a main responsibility, like overseeing all aspects of Student Success. Teachers often ask me for help with discipline or other difficult situations. If a teacher is struggling with an issue in their classroom, they usually bring it to me.

Who is the right vice-principal for you to talk to at your school?





Welcome to our school! I am the **principal**. I am the person responsible for everything that happens at our school, from teachers teaching the curriculum, to counselors and social workers supporting individual students, to the vice-principals working to support me in my leadership role. I also create the budget for our school. If something serious is happening, like discrimination, it's my job to do something about it. Sometimes I don't know, because I can't be everywhere, but staff should keep me informed.

Who is the principal of your school?

Hello! I am the **superintendent** for your school! I am kind of like a super-principal, because I supervise the principals at several schools within a district. I support them and ensure their schools are running smoothly, which means that I regularly visit my schools to meet with principals and staff. Some superintendents have a special role across an entire district, like equity, diversity or human rights. If you might be experiencing discrimination in your school and this is not changing despite your self-advocacy, or if something tells you it won't change even if you try, I am someone who can help. This is my responsibility whether or not I have a special role.

Use the school board finder at www.gegi.ca to find contact information for a superintendent in your school board.



Pro tip!

When you figure out who to start with on your self-advocacy journey, bring copies of **Gegi's Gender Needs Assessment Tool** and **Gegi's Self Advocacy Log** with you, or include them along with your email where you ask to meet. **Gegi's Email Primer** will help you to write an email that gets their attention!

Step 2: Contact the person identified in Step 1

The next step is writing the email that will get you a meeting with whoever you have selected. It is extremely rare for someone in a position of authority in a school board to ignore a direct email from a student, especially when the topic is transphobia or a form of discrimination. However, it's vital to let the person know why you are emailing them and why you are not, for example, simply going to those responsible at the school (who have failed to take action). The Gegi [Email Primer](#) tool offers helpful advice on your email's tone and content so that the situation is immediately taken seriously and seen in its true urgency.

Step 3: Plan your response

Once you have identified the best person to meet with and sent your email, take some time for response planning. As much as you can, and if it is not too difficult, imagine what a person without trans experience or much understanding of gender diversity might say, and prepare for that conversation using your resources. There is some help for this in another Gegi tool: the [Solution Planner](#). On the next page is a filled-out example from the Gegi self-advocacy module Safia the Swimmer.



Solution Planner

In Step 4 (see www.gegi.ca), bring what you have learned from Gegi and your supporting adults (or friends, if you do not have an adult in your corner) to a person with the power to change what is happening to you. **Gegi's School Who's Who** can help you figure out who this is. It's a good idea to bring solutions with you when you meet with that powerful person. They might not know as much about gender identity and gender expression as you do, or understand their legal responsibilities. *[Square brackets] mean add your own info.*

Pro tip: Gegi's Gender Needs Assessment Tool will help you figure out what you need. We suggest completing it before you tackle this Solution Planner.

Describe the problem in a couple of sentences.

I have been told by my team's synchronized swim team coach that I can't compete with the team because my modest swimsuit (for religious reasons) won't match the other swimmers' costumes. Ms. Huang (coach) told me that I could be an assistant coach this year instead.

What is the BEST thing that could happen? When your problem is totally gone, what does that look like?

BEST solutions are things that will take time, and cost money.

Getting to compete with the team, and the synchro organization changes its competition rules.

What would be BETTER than your current situation? Not the best thing, but a big improvement.

BETTER solutions don't cost much money, but they can take time.

Getting to compete with the team, and the school (principal?) writes a letter to the synchro organization about changing its competition rules.

What is a GOOD-ENOUGH change, for now? What will make your life easier, for the school year?

GOOD solutions are quick fixes that can happen tomorrow, on the way to BETTER or BEST.

Getting to compete with the team, and my school supports me.

This www.gegi.ca tool supports students in meeting expectations in the Gegi Curriculum: **C1.** Identify and communicate my own needs around gender: what they are and what I need other people to do in order to meet them. **D3.** Identify good-enough, better, and best solutions to each problem in my story. **D4.** Anticipate my school's response(s) to my story and how I would respond, including where I stand my ground and where I compromise. The Gegi Curriculum was developed with experts on gender diversity, law, and education. | v3 July 2023 | Gegi.ca contains general legal information and is not intended to be used as legal advice for a specific legal problem.

How to use your Solution Planner when you meet with someone who has the power to make change

Gegi can't predict how every person will respond, but we do have some suggestions.

1. **Put it all on the table.** Share your BEST, BETTER and GOOD solutions once you have described the incident(s) of discrimination that have happened to you at school.
2. Insist that your BEST solution will not only meet your needs, but also help the school: it won't fail to meet its legal human rights obligations toward **other students in the future**.
3. If they say "these things take **time**," you can say "I understand, but let us discuss how much time [solution] will take. I have been learning about gender identity and gender expression self-advocacy from www.gegi.ca which was made by experts in law and education using the most recent research and caselaw. I understand it is your responsibility to begin taking action now that you know this is happening to me at school."
4. If they say "we don't have the **budget**," you can say "I have been learning about gender identity and gender expression self-advocacy from www.gegi.ca which was made by experts in law and education using the most recent research and caselaw. The amount of money it would cost to [do your BEST or BETTER solutions] is unlikely to be seen as undue hardship by a human rights tribunal. I am confident that the money can be found."
5. **Don't leave** the meeting until:
 - a. The person has committed to implementing the GOOD solution;
 - b. The person has stated what action they are going to take about the BETTER solution;
 - c. You have a follow-up meeting date and time.
6. Send a **follow-up email** right away – the Gegi Email Primer tells you how.
7. Remember to log the meeting in your **Gegi Self-Advocacy Log**. If it was a good meeting, write about what people committed to doing (#5 above). If the meeting was unhelpful or made you feel unsafe, then you may have experienced more discrimination – log it as an incident, and add an Incident Report in your Log. Re-group with your team and make sure you are getting the help and care you need.



Hoof-five! This can be hard to do. Now finish up like a pro, if you want to:

Visit law.gegi.ca and use our keyword searches to find **human rights cases** in any province, starting with your own. These cases help determine what discrimination looks like, and what a place like a school must do to prevent and respond. Find a case or two like yours, and bring its name and Gegi's Takeaway to your meeting. Talk about cases to show you know your stuff.

For example, if the student is being deliberately misgendered, the person you're meeting with may respond that "it takes time for people to learn new pronouns." How will you respond, using your documentation and your policy connections? Perhaps you have an entire month of deliberate misgendering incidents in your log. As another example, if the student is a transgender girl who is being harassed in the girls' washroom, how will you

respond if the person offers a single-stall gender-neutral washroom for her use instead of addressing the harassment? Perhaps you can point to a section of the [OHRC policy](#) which states that requiring a transgender person to use a gender-neutral washroom is gender identity discrimination (see sections 13.4.1 and 13.8).

Step 4: Follow up

After the meeting, follow up with an email that thanks the person for their time, states what you told them, lists what they agreed to do, and restates the date of your follow-up meeting (do your best not to leave the meeting without a follow-up meeting scheduled). The trusted adult supporting the student should check in regularly with the student. Work to ensure that the log is updated while waiting for the follow-up meeting.

In the event that you have the opportunity to advocate for policy changes in your school board to implement proactive practices around inclusive design, preventing discrimination, and responding to transphobic conduct in schools so that school boards meet their human rights obligations automatically (without the need for individual advocacy), you may wish to reference the LAT [Sample School Board Policy](#), and the York Regional District School Board (“YRDSB”) and Toronto District School Board (“TDSB”) models for staff to respond to discrimination:

- YRDSB [Responding to Discrimination in Our Schools](#)
- TDSB [Expected Practices for Understanding, Addressing and Preventing Discrimination](#)
- TDSB’s robust [Procedure for Reporting and Responding to Racism and Hate Incidents Involving or Impacting Students in Schools](#)

It is helpful to be aware of these response frameworks as you may consider advocating for similar models to be implemented in your school board.

Taking things beyond the school board

It may, unfortunately, be the case that you follow all the suggestions in this chapter and still do not see sufficient action taken to make the transphobic bullying stop, or make your school take action to prevent GEGI discrimination. In this section, we suggest some paths forward beyond the school board in which the bullying or discrimination is taking place.

Hire a lawyer

Consider hiring a lawyer who is knowledgeable in the area of human rights. Getting a scary letter from a lawyer setting out how the school board is violating the law, and threatening a human rights complaint or other legal action, can help motivate a school board.

Your provincial or territorial law society (professional organization for lawyers and other law workers) may have a “Lawyer Referral Service” or other similar service to assist you in connecting with a lawyer. If you cannot afford a lawyer, consider researching options for free legal support. For instance, search online to find out whether your jurisdiction has any pro bono (free) legal services. Try a Google search for “pro bono legal services” or “free human rights legal services”, or similar.

In Ontario, the Law Society of Ontario’s [Referral Service](#) will provide a free consultation of up to 30 minutes to help you determine your rights and options, provided they have a match available (visit www.findlegalhelp.ca). Or you could try connecting with your local [Community Legal Clinic](#) for assistance with human rights matters.

In B.C., the [Catherine White Holman Wellness Centre](#) offers free one-time summary legal advice appointments to Two-Spirit, transgender and gender non-conforming people in B.C., and the [OMUNITY Legal Clinic](#) offers free legal services for 2SLGBTQIA+ individuals. The Access Pro Bono Society of British Columbia’s [Lawyer Referral Service](#) offers a free 15-minute consultation with a lawyer to determine your legal needs and how you can be served. The [Community Legal Assistance Society](#) provides assistance with human rights matters.

File a human rights complaint

If you are unable to get your issue resolved, you can consider taking legal action, such as filing a human rights complaint. You can do this with or without hiring a lawyer or getting free legal advice (see previous section).

- For B.C. residents, see [Chapter 2](#).
- For Ontario residents, please see the [Human Rights Legal Support Centre](#) website.
- Lawyers Against Transphobia may also be able to offer advice, you can email us at lawyersagainsttransphobia@gmail.com.

Supporting a student who is experiencing GEGI discrimination or transphobic bullying

It's hard enough to be targeted for transphobic bullying or to experience GEGI discrimination without taking on the added burden of having to self-advocate for people to do something about it. Make no mistake - a young person experiencing this is going to struggle in many areas, including academics, self-care and relationships. Gegi's [Care and Support Assessment](#) is a useful tool for guiding a conversation or reflection on what a student might need during this process, and to resource themselves to make the decisions they need to make.

Here is some advice for a supporting adult, beyond making some time to fill out the Gegi Care and Support Assessment with and for the student:

- Get the student immediately connected with trans-positive and/or (as applicable) queer-positive supports in the school, in the community, or online. In-person is best, but the [Kids Help Phone](#) is extremely 2SLGBTQ+ affirming and available by phone, text or online 24/7.
- Be led by the student but don't be afraid to offer suggestions based on your own knowledge of the system and school they are in, and generally of how to get things done in an adult's world. This, in addition to your belief in the student and positive regard for them, is one of the most important benefits of your support as they go through this experience.
- If the student agrees, directly negotiate special treatment for the student with school staff, particularly if there are times or spaces at school where the bullying takes place (for example, at lunch or when there is minimal supervision, in washrooms or change rooms). Make people understand that, at these times and in these spaces, this student needs something different right now.
- Offer the student some of the messages in the previous section and elsewhere in this Handbook, particularly the affirmation that this is hard, whatever they are doing is their best and you respect that, and that taking care of themselves is the most important job they have right now.
- Resource yourself. You will experience tension, conflict and potentially also reprisal, particularly if you also work at the school where others are not taking action. If you are a unionized staff, check in with your union local rep and let them know what's

going on. Confide in trusted friends and colleagues, and do what you need to do to be safe and okay at work. If you do experience reprisal as a staff member, make sure you are aware of your board's human rights and workplace harassment policy and procedure applicable to staff. Being targeted for standing up for a student can be a violation of your rights.

- If you work at the school where the student is not being supported, let your colleagues know the bullying is happening and that it is not being addressed, and offer strategies. Ask to hear about the bullying so you can support the student in logging it.
- If you believe that the student may be at risk of self-harming or being directly harmed by others (for example, physical or other forms of violence), follow standard reporting processes.

Appendix 1: Discriminatory Exemptions from 2SLGBTQIA+ Content

2SLGBTQIA+ exemption forms and letters are being created by online groups for use by parents who do not want their children to learn about 2SLGBTQIA+ individuals. Parent requests for students to be exempt from 2SLGBTQIA+ content in school pressures school boards to suppress discussion of 2SLGBTQIA+ individuals, and particularly transgender and non-binary identities, and to have these identities silenced and marginalized in the school setting. They also create situations where students are being permitted to walk out of class whenever 2SLGBTQIA+ identities are mentioned, which could include the identities of their classmates who have the experience of being in class when their classmates exit the room to avoid hearing about their identities.

In Ontario, the Ontario Ministry of Education's [Policy and Program Memorandum 162](#) directs school boards to provide exemptions from instruction related to Human Development and Sexual Health ("HDSH") to any student whose parent requests it for any reason. The HDSH exemption does not apply to 2SLGBTQIA+ related content that arises outside of the HDSH modules. Nonetheless, concerns are being raised that, in some Ontario schools, 2SLGBTQIA+ content is being segregated/relegated into HDSH or that students are being granted exemptions from 2SLGBTQIA+ content that arises outside of the teaching of HDSH.

The implementation of exemptions from 2SLGBTQIA+ content or the segregation of 2SLGBTQIA+ content into HDSH modules almost certainly violate school boards' human rights obligations and legislative mandates to create safe, inclusive, welcoming environments for all students and staff. Such exemptions and segregation is likely to create poisoned environments for 2SLGBTQIA+ staff and students, and all staff who wish to support 2SLGBTQIA+ inclusion. This is contrary to human rights legislation.

Furthermore, the implementation of such exemptions and segregation is fundamentally incompatible with the purpose and mandate of publicly funded education.

Unfortunately, school boards can be quick to assume that these requests for exemption are valid, or that if someone asserts a right to religious accommodation, there is automatically a situation of conflicting or competing human rights.

To the contrary, it would be very difficult for someone to establish that their religion precludes their child from even hearing about the identities of others. Even if that could be established, it is unlikely this right is so central to a religious belief that it would override

the human rights of 2SLGBTQIA+ students to exist and be included and respected in the school environment in accordance with government mandates of inclusive education.

In summary, with the exception of solidarity activities (eg. activities that call upon students to express a particular belief or view), granting students broad exemptions from 2SLGBTQIA+ content or segregating this content into HDSH modules probably violates human rights legislation.

There is a concern that the Ontario government's [recent creation of an exemption from guest speakers](#) will create a discriminatory effect by effectively targeting 2SLGBTQIA+ content, and other marginalized content.

References:

[*Chamberlain v. Surrey School District No. 36*, 2002 SCC 86](#)

[*E.T. v. Hamilton-Wentworth District School Board*, 2017](#)

[*S.L. v. Commission scolaire des Chênês*, Supreme Court of Canada, 2012](#)

OHRC [Policy on competing human rights](#)

Appendix 2: Ontario Inclusive Schools & Anti-Bullying Legislation and Government Policy

Inclusive schools

Section 169.9 of the Ontario [Education Act](#) states:

Board responsibility for student achievement and effective stewardship of resources

169.1 (1) Every board shall,

(a) promote student achievement and well-being;

(a.1) promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability;

(a.2) promote the prevention of bullying;

(b) ensure effective stewardship of the board's resources;

(c) deliver effective and appropriate education programs to its pupils;

(d) develop and maintain policies and organizational structures that,

(i) promote the goals referred to in clauses (a) to (c), and

(ii) encourage pupils to pursue their educational goals;

The [Accepting Schools Act](#), 2012 indicates that the people of Ontario and the Legislative Assembly:

- Understand that students cannot be expected to reach their full potential in an environment where they feel insecure or intimidated;
- Believe that all students should feel safe at school and deserve a positive school climate that is inclusive and accepting, regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability;
- Believe that a healthy, safe and inclusive learning environment where all students feel accepted is a necessary condition for student success;

- *Believe that students need to be equipped with the knowledge, skills, attitude and values to engage the world and others critically, which means developing a critical consciousness that allows them to take action on making their schools and communities more equitable and inclusive for all people, including LGBTTIQ (lesbian, gay, bisexual, transgender, transsexual, two-spirited, intersex, queer and questioning) people;*

Collectively, the above legislation, as well as government policy ([Policy & Program Memorandum 119: Developing and implementing equity and inclusive education policies in Ontario schools](#); [Ontario's Education Equity Action Plan](#), [Equity and Inclusive Education in Ontario Schools – Guidelines for Policy Development and Implementation](#)) mandate and support the full integration of 2SLGBTQIA+ content.

They direct that:

all members of the school community should feel safe, included, welcomed, and accepted for who they are; teaching practices and curriculum must reflect the needs and realities of all students; 2SLGBTQIA+ students should be represented in the curriculum lessons, projects, resources, programs, physical surroundings and culture of the school; and school and classroom practices must be reflective of and responsive to the diversity of students and staff with authentic and relevant opportunities to learn about diverse histories, cultures, and perspectives.

Addressing bullying

Sections 300 to 303.3 of the Ontario [Education Act](#) set out specific protocols school principals must follow in response to instances of bullying.

The Ontario Government also has a [Policy and Program Memorandum No. 144: Bullying prevention and intervention](#) (PPM 144), that directs school boards on how to address student-to-student bullying.

If you are in Ontario, it is important to review PPM 144 and the above provisions of the *Education Act* to help you advocate to ensure that the school board meets its legal obligations in how it addresses student-to-student transphobic bullying. Additionally, each school board will have its own policies that flow from PPM 144.

Of note, under section 300.3(3) of the *Education Act*, the principal cannot notify a parent of the bullying if to do so would put the student at risk of harm. Due to both this section and

the *Human Rights Code*, parents never be provided with information that would **out** the student.

Outing is the act of disclosing a person's sexual orientation or gender identity without their consent. It is derived from the term "coming out".

Appendix 3: British Columbia Inclusive Schools Legislation and Government Policy

In B.C., the Ministry of Education oversees public schools, as well as independent schools such as private and Catholic schools. There is separate legislation and separate government policy for public and independent schools. Public schools are governed by the [School Act](#) and independent schools are governed by the [Independent School Act](#).

Code of Conduct for public schools

Section 6 of the [Provincial Standards for Codes of Conduct Order](#) states, in part:

Boards must ensure that the following elements are included in their codes of conduct

(a) reference to:

(i) each of the prohibited grounds of discrimination set out in section 7 (Discriminatory publication) and section 8 (Discrimination in accommodation, service and facility) of the Human Rights Code, RSBC 1996, c. 210, and

(ii) without limiting subsection (i), sexual orientation, gender identity or expression;

...

(c) one or more statements about what is

...

(ii) unacceptable behaviour, including bullying, cyberbullying, harassment, intimidation, threatening or violent behaviours while at school, at a school-related activity or in other circumstances where engaging in the activity will have an impact on the school environment;

(d) one or more statements about the consequences of unacceptable behaviour, which must take account of the student's age, maturity and disabilities or diverse abilities, if any;

(e) an explanation that the board will take all reasonable steps to prevent retaliation by a person against a student who has made a complaint of a breach of a code of conduct.

Harassment and bullying in independent schools

Each independent school needs to establish and implement a harassment and bullying prevention policy according to the [Harassment and Bullying Prevention Order](#). The policy must include a reference to the protection of students' physical safety, social connectedness, inclusiveness and protection from all forms of bullying regardless of their sexual orientation or gender identity. There must also be one or more statements about what is unacceptable behaviour, including bullying, cyberbullying, harassment, intimidation, threatening or violent behaviours while at school, at a school-related activity or in other circumstances where engaging in the activity will have an impact on the school environment. Other elements include a commitment to take reasonable steps to prevent retaliation by a person against a student who has made a complaint of a breach of the policy.

Safe and Caring School Communities policy

The [Safe and Caring School Communities](#) policy for public schools and the [Safe and Caring School Communities – Independent Schools](#) policy have the same objective of creating safe and inclusive environments for all students and addressing concerning behaviour. Below are points that are contained in both policies. Please note that each policy also has additional statements not listed below which may only be applicable to public or independent schools.

Members of these school communities share a commitment to maintaining safe and caring schools. They are striving to:

- use school-wide efforts to build community, fostering respect, inclusion, fairness, and equity
- teach, model, and encourage positive social behaviours that contribute to the school community, solve problems in peaceful ways, value diversity, and defend human rights
- work together to better understand issues such as bullying, discrimination, and other worrisome behaviours and respond effectively and appropriately
- respond consistently to incidents in a fair and reasoned manner, using interventions that repair harm, strengthen relationships, and restore a sense of belonging

- engage in continuous learning and professional development to foster safe school communities and address emerging safety concerns
- recognize and celebrate achievements, while monitoring, evaluationg and acknowledging areas that need improvement

Diversity policy for public schools

In the [Diversity in B.C. Schools](#) policy, boards of education and schools are expected to develop and implement polices and practices that honour diversity and respect the rights of all individuals under the law. Addressing diversity encompasses taking into account different experiences including gender identity and expression. Additionally, encouraging understanding, acceptance, mutual respect and inclusion, in order to make school communities and society as a whole more equitable for all people.

The conditions that foster success for all students include equitable access and equitable participation for all students; learning and working environments that are safe and welcoming, free from discrimination, harassment and violence; and policies and practives that promote fair and equitable treatment.

Appendix 4: *James Chamberlain v. Surrey School District No. 36*

In [*Chamberlain v. Surrey School District No. 36*, 2002 SCC 86](#) (“Chamberlain”), a B.C. school board refused to approve books depicting same-sex parents for use in kindergarten on the basis that:

- the books would engender controversy in light of some parents’ religious objections to the morality of same-sex relationships;
- kindergarten children should not be exposed to ideas that might conflict with the beliefs of their parents;
- kindergarten children were too young to learn about same-sex parented families; and
- the material was not necessary to achieve the learning outcomes in the curriculum.

The majority of the Supreme Court of Canada quashed the board’s decision. It determined that the board must act in a way that promotes respect for all the diverse groups that it serves, and that the board’s decision was unreasonable because it violated the principles of secularism, non-discrimination, and tolerance mandated by the B.C. *School Act*.

Instead of proceeding on the basis of respect for all types of families, the Board proceeded on an exclusionary philosophy, acting on the concern of certain parents about the morality of same-sex relationships, without considering the interest of same-sex parented families and the children who belong to them in receiving equal recognition and respect in the school system. ... It failed to consider the curriculum’s goal that children at the K-1 level be able to discuss their family models, and that all children be made aware of the diversity of family models in our society.

From [case headnote](#).

Chapter 5: Parent Rights and Responsibilities

If you are a parent of a trans kid, this chapter is for you.

In schools, anti-trans activists rely on claims of “parental rights” to justify anti-trans initiatives. They include claims that parents have a legal right to information about how their child is identifying at school, what name their child is going by, and to control how their children express their gender identities at school, regardless of whether or not their child consents.

Additionally, parents may claim a right to determine whether and how their children learn about sexual and gender diversity, and to take them out of class when those subjects are taught.

But parents **do not have a legal right** to control these aspects of their children’s education, nor to dictate the actions taken by schools and school staff in this regard.

Parents’ rights under the [School Act](#) are:

- to be informed of their child’s attendance, behaviour, and progress (s 7(1)(a))
- to belong to a Parent Advisory Council (s. 7(1)(c))
- to consult with the teacher or principal with respect to their child’s educational program (s 7(2))
- to examine records about their child (s 9(1)(a))
- to appeal a school district employee’s decision (s 11)
- or to register a child for homeschooling (s 12)

This chapter explores the scope and limits of parents’ rights in relation to the school when it comes to issues of gender identity in schools. **It does not address rights of parents with respect to disputes between parents or guardians about these matters.** From a school’s perspective, whichever parent has guardianship rights with respect to a child’s education is the parent that the school listens to. If a parent claims they are the only one with authority over a child’s education, they must produce a court order.

Parents’ rights and freedoms under the *Charter*

The [Canadian Charter of Rights and Freedoms](#) (the *Charter*) is the part of the Constitution that sets out the fundamental rights of all Canadians in respect of state authority over them and

their lives. The freedoms guaranteed by the *Charter* can only be restricted by governments if they can meet a specific test showing that the restrictions are justified and minimal.

The *Charter* applies only to government and government agencies (including school boards). It doesn't apply, for example, between parents.

Charter rights of one individual or group frequently come up against the rights of other individuals or groups. The freedoms and rights guaranteed to each individual under the *Charter* do not permit any individual to intrude on the rights and freedoms of other persons. An example of this concept is hate speech: one person's freedom of speech ends where it harms another person or group.⁵²

Both parents and children have rights guaranteed by the Charter.

Parents have the right to raise their children however they choose, so long as they do not act contrary to their children's best interests.⁵³ That is part of a parent's right to "liberty", protected by s. 7 of the *Charter*.

Two of the other fundamental freedoms guaranteed in the *Charter* are relevant to the ideological concept of "parents' rights": the freedom of conscience and religion, and freedom of expression.

Section 2(a) of the *Charter* guarantees the fundamental freedoms of conscience and religion. This is the genesis of the legal right parents have to raise their children in line with their religious beliefs. This right does not and cannot trump children's rights. For example, a religious belief in polygamous marriage does not trump children's rights to safety.⁵⁴

Section 2(b) of the *Charter* guarantees freedom of expression. Parents with anti-trans ideologies have the freedom to express those views, limited of course by the rights of other who may be harmed by such expression, including their own children. For example, a parent's freedom of expression does not permit a parent to out or dox their trans child on anti-trans websites or publications.⁵⁵

⁵² *R v Keegstra*, [1990] 3 SCR 697. <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/695/index.do>

⁵³ *B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315.

<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1220/index.do>

⁵⁴ Reference re: Section 293 of the *Criminal Code of Canada*, 2011 BCSC 1588.

<https://canliiconnects.org/en/commentaries/27355>

⁵⁵ *AB v CD*, 2020 BCCA 11. <https://www.canlii.org/en/bc/bcca/doc/2020/2020bccca11/2020bccca11.html>

In considering the extent of “parental rights”, the courts require that a parent be exercising those rights according to the “best interests of the child”.

Parent’s rights and obligations under the *School Act*

Parents’ rights in relation to their children’s education in public schools are set out in the [School Act](#). Parents’ rights in this regard are narrower than many people might expect. Parents have the right to be informed about their children’s attendance, behaviour, and progress at school.⁵⁶ Parents have the right to consult with the teacher or administrator about their children’s educational program.⁵⁷ Parents have the right to participate in Parent Advisory Councils, which also have legal status under the *School Act*.⁵⁸

Parents also have obligations under the *School Act*. Parents are obligated to enroll their children in an educational program.⁵⁹ This includes parents who choose homeschooling: homeschooled children must also enroll in an educational program.

Parents do not have a right to determine what their child will be taught in school.

Strictly speaking, on the basis of the *School Act* itself, parents do not have the right to opt their children out of parts of the curriculum.⁶⁰ In practice, schools tend to be flexible and allow parents to opt out of very specific parts of the curriculum on the basis of their religious beliefs or other well-founded objections. Arguably section 2(a) of the *Charter*, guaranteeing religious freedom, requires schools to provide this flexibility.

However, there is no clear line about exactly what, nor how much, curriculum a parent can choose to opt their child out of. Conceptually, there is a point where a parent opts a child out of a significant enough portion of the curriculum that the parent is no longer complying with their obligation under the *School Act* to have their child participate in an educational program.

⁵⁶ *School Act*, s. 7(1)(a).

⁵⁷ *School Act*, s. 7(2).

⁵⁸ *School Act*, s. 7(1)(c) and s. 8.

⁵⁹ *School Act*, s. 3.

⁶⁰ Parents are required to enrol their children, and children up to age 16 are required to participate in an educational program. There is no caveat for opting out of parts of an educational program. And “educational program” is defined in the legislation.

However, there is no clear line about exactly what, nor how much, curriculum a parent can choose to opt their child out of. Conceptually, there is a point where a parent opts a child out of a significant enough portion of the curriculum that the parent is no longer complying with their obligation under the *School Act* to have their child participate in an educational program.

Children's rights under the *Charter*

Children also have rights under the [Charter](#). Everyone, including children, has the right to equality on the basis of gender, sexual orientation, and gender identity (among other grounds).⁶¹ Everyone, including children, has the right to life, liberty, and security of the person.⁶² Children also have the same rights that parents have in freedoms of religion, conscience, and expression, although these are likely to be exercised differently.

The rights guaranteed by the *Charter* are rights vis-à-vis the state. That means that parents do not have an obligation to respect the Charter-protected rights of their children. It is the state that has an obligation to respect these rights, in its laws and public institutions.

Parents' legal responsibilities in relation to their children are set out in s. 41 of the [Family Law Act](#), "Parental Responsibilities". Nowhere in the *Family Law Act* is there a reference to "parental rights".

In the context of public education, the government (acting through school boards and public schools) has an obligation to ensure that children experience equality on the basis of their gender, sexual orientation, and gender identity. Similarly, the government has an obligation to ensure that children in schools are safe and secure. These obligations inform the policies and practices schools must have in place to protect transgender children from harassment or other harms – including inflicted by parents. See [Chapter 4: Supporting Student Rights](#).

Balancing parents' rights claims and children's rights in schools

It can be difficult to determine exactly where parents' rights to raise their children in line with their beliefs ends and children's rights to equality and safety begin. This section considers some of the issues that may arise in the school context

⁶¹ *Charter* s 15.

⁶² *Charter*, s 7.

Pronouns

Do parents have the right to dictate what pronouns school staff use to address their child?⁶³

No.

Parents do not have a right to dictate classroom policies and practices. Teachers manage classrooms by exercising professional autonomy within the bounds of the policies created by school districts and the Ministry of Education. School administrators create school-wide policies in collaboration with school staff, also within the bounds of district and Ministry requirements.

A good illustration of the fact that parents can't dictate a child's pronouns in school is the Saskatchewan legislation which now requires schools to out their students to their parents.⁶⁴ If parents *already* had a right to know (or to dictate) a student's pronouns, this law would be unnecessary.

Privacy

Do parents have the right to require school staff to tell them how their child is expressing their gender identity?

There is both a legal and a practical answer to this question.

Legally, the *School Act* says that a parent has a right see student records.

There are two exceptions:

1. If the 'record' in question is held by only one person (e.g. a counsellor's notes that are not part of a computer record system); or
2. The 'record' is a report to Child and Family Services.

This question should be considered in the same way as disclosure of any other information about a child to the parent. School staff have a legal obligation to act in the best interests of

⁶³ For a discussion of the law about "parental rights" with respect to a student's pronouns, see Florence Ashley *Parental Rights over Transgender Youth: furthering a Pressing and Substantial Objective* 2024 CanLiiDocs 2516. <https://www.canlii.org/en/commentary/doc/2024CanLII Docs2516>

⁶⁴ *The Education (Parents' Bill of Rights) Amendment Act*, SS 2023, c 46. <https://www.canlii.org/en/sk/laws/astat/ss-2023-c-46/latest/ss-2023-c-46.html>

the child.⁶⁵ If this disclosure may result in abuse of the child, then staff have a legal duty not to disclose. On the other hand, if this disclosure is likely to result in the parent supporting the child in an appropriate and safe manner, a court would likely find that school staff do not have a legitimate basis to refuse to disclose that information. This is not specific to gender identity; this is generally the case with any information about a student.

Learning resources

Do parents have the right to demand that certain learning materials not be used?

No.

Under the *School Act*, school districts determine what learning materials can be used.⁶⁶ In practice, individual teachers generally decide what materials to use in their classrooms, within the bounds of district policies and exercising their professional judgment. Parents do not have any authority to determine what books or other materials are used in classes.

Parents also do not have a right to control what is in school libraries.

Conclusion

Though the law recognizes that parents have “parental rights” guaranteed by the *Charter of Rights*, those rights are limited:

1. by the general law, which requires that parents exercise those rights in a child’s best interests;
2. when the exercise of parental rights impacts a child’s constitutionally-guaranteed rights, by a balance between a parent’s rights and a child’s rights; and
3. by the *School Act*, which specifies the limits of parental participation in school matters.

⁶⁵ School staff and other adults in positions of legal responsibility for children act *in loco parentis*, which means that they are broadly speaking in the place of the parents. While school staff do not have identical responsibilities for children as do parents, they are legally responsible for the safety and well-being of children in their care while at school.

⁶⁶ *Education Program Guide Order*, pursuant to s. 168(2)(a)(c)(e) of the *School Act*, issued by the Minister of Education and Child Care July 1, 2024, s. 5.

Chapter 6: Superintendent Rights and Responsibilities

Introduction

This chapter is written to and for superintendents in B.C., but this advice can apply to superintendents across Canada.

As superintendent, you have overall responsibility for operations in your school district. Specifically, you have legal rights and legal responsibilities in relation to the growing current of transphobia, and responsibilities for safeguarding trans students, faculty and staff. This chapter outlines those rights and responsibilities and gives some examples to guide your practice.

Section 22 of the [School Act](#) says that the superintendent, under the direction of the board:

- has general supervision and direction over the educational staff employed by the board;
- is responsible for improvement of student achievement in the district;
- is responsible for the general organization, administration, supervision and evaluation of all educational programs provided by the board; and
- is responsible for the operation of schools in the district.

The regulations stipulate that a superintendent of schools also:

- assists in making the *School Act* and regulations effective and carry out a system of education in conformity with the orders of the minister;
- advises and assists the school board in exercising its powers and duties;
- investigates matters at the request of the minister; and
- performs duties outlined by the board.

School boards are responsible for maintaining a school district free from human rights violations, including transphobia.

As a practical matter, this responsibility to ensure a human rights-compliant district falls on the shoulders of the school superintendent. Human rights violations include structural discrimination against trans people, and transphobic bullying or harassment.

What you're working towards

As superintendent, you have a vital role in working towards a school district free from transphobic violence. This would look like:

- School board meetings that are accepting and welcoming of trans and nonbinary people
- The district being in compliance with all relevant legislation bearing on transphobic bullying or harassment
- The school board having robust policies with respect to
 - SOGI curriculum
 - bullying, harassment and violence, and the consequences for that behaviour
 - safety plans for anyone impacted by a transphobic attack
- An audited physical plan upgraded to accommodate trans students
- For everyone in the district to have training in and understanding of:
 - the nature of gender identity and the needs of trans students, staff and teachers
 - what transphobia looks like, its current salience in the education context (and why it is not freedom of speech)
 - how to respond to transphobia:
 - by staff or teachers, including applicable collective agreements
 - by students, including disciplinary expectations
 - by parents
 - by non-school members of the community
- For every relevant person in the district to understand
 - the consequences of transphobia
 - whether and how a collective agreement applies
- For every teacher, staff member and student to understand
 - that their district will protect them from transphobia
 - what options are available if they are attacked

- the elements of an effective safety plan
- the consequences of transphobic speech
- School and extracurricular activities are conducted in a trans-inclusive fashion

Recap: the five alarm fire

In [Chapter 1](#) of this Handbook, we outlined how Canada's far-right chooses to target the tiny population of transgender youth.

The consequences of this strategy is all too visible in the U.S., where Trump has announced actions to target trans people, including:

- Declaring that there are only two sexes
- No longer issuing X gender markers on passports
- Requiring federal agencies to offer only 'f' and 'm' as gender choices on federal documents
- Forcing transwomen to be incarcerated in men's prisons
- Revoking Biden's order permitting trans people to serve in the military
- Banning trans athletes from women's sports

These initiatives bolster anti-LGBTQ bills across the U.S. As of May 2025, there are already 895 such bills under consideration in states across the country.⁶⁷

In Canada, the right wing has been similarly targeting the education system with:

- Mass rallies
- Disruptions at school board meetings
- Picketing at schools
- Targeting and/or **doxing** LGBTQI+ teachers

Doxing is the act of searching for and publishing private or identifying information about a particular person, usually with malicious intent.

Saskatchewan and Alberta governments have announced policies or laws that require teachers to '**out**' trans students to their parents, regardless of whether the student

⁶⁷ Trans Legislation Tracker <https://translegislation.com/>

consents, and notwithstanding the documented danger of doing so. New Brunswick repealed its discriminatory policy when the government changed.⁶⁸

Outing is the act of disclosing a person's sexual orientation or gender identity without their consent. It is derived from the term "coming out".

Alberta went further, outlawing certain kinds of medical care for trans youth, and banned trans girls and women from women's sports.

Proposed changes outlined in the *Education Amendment Act, 2024*, and the *Health Statutes Amendment Act, 2024*, include:

- Students would not be able to learn about sex education, gender identity, and sexual orientation in school unless their parents have opted-in to them receiving that instruction.
- Any third-party instructional material would need approval from Alberta Education before it is used in the classroom.
- Schools would have to notify and receive permission from parents when a child under 15 wants to use a pronoun or name different from what they were given at birth. Older students aged 16 and 17 would require parental notification.
- Minors under age 15 would not be allowed to receive hormone therapy and puberty blockers. Patients who started the treatment before proclamation of the bill would be exempt. Minors who are 16 and 17 would be able to receive the medication with the approval of parents, a physician and psychologist.
- Physicians would be prohibited from performing top and bottom gender surgeries on minors. Bottom surgery is already restricted to patients over the age of 18. All surgeries are currently performed in Quebec.

The Fairness and Safety in Sport Act would limit membership on female competitive sports teams to athletes who were female at birth.⁶⁹

⁶⁸ CBC News: Holt Liberals remove parental consent requirement from Policy 713.

<https://www.cbc.ca/news/canada/new-brunswick/holt-government-new-policy-713-1.7415289>

⁶⁹ CBC News: Alberta tables bills on transgender youth health care, students' pronouns, opt-in sex education.

<https://www.cbc.ca/news/canada/edmonton/alberta-tables-bills-on-transgender-youth-health-care-students-pronouns-opt-in-sex-education-1.7370006>

The Fairness and Safety in Sport Act and the *Health Statutes Act* changes have not yet been proclaimed into force. Changes to the *Education Act* come into effect September 1, 2025.

Saskatchewan's policy was thrown out by the court, which ruled that it contravened the constitutionally protected equality rights of transgender students.⁷⁰ In response, Saskatchewan enacted the notwithstanding clause, a law explicitly saying that the law operates "notwithstanding" the equality rights provisions of the [Canadian Charter of Rights and Freedoms](#) (the *Charter*). Read more about this in [Saskatchewan's cynical gamble](#).

Alberta Premier Danielle Smith has already promised to also invoke the notwithstanding clause if courts overturn the legislation.⁷¹

This move is shocking.

Though governments can override the rights guaranteed in the *Charter*, the legislative authors expected the notwithstanding clause to only be used in dire situations. A government wanting to rely on the notwithstanding clause must include language saying so in its legislation. Any law which contains the notwithstanding clause automatically expires after five years.

B.C. Conservative Party leader John Rustad has also said that he will consider the use of the notwithstanding clause to deal with drug use on city streets.⁷²

The transphobia in the B.C. school system is not just another issue on a list of discriminations, it is being used as a vehicle to endanger the fundamental equality rights of all Canadians.

If use of the notwithstanding clause becomes normalized, it will be used to cancel anyone and everyone's equality rights at the whim of a conservative government.

⁷⁰ *UR Pride Centre for Sexuality and Gender Diversity v Saskatchewan (Minister of Education)* 2023 SKKB 24. For an excellent discussion of these laws, see Florence Ashley [Parental Rights Over Transgender Youth: Furthering a Pressing and Substantial Objective?](#)

⁷¹ CBC News: Alberta Premier Smith willing to use the notwithstanding clause on trans health bill. <https://www.cbc.ca/news/canada/calgary/alberta-premier-smith-willing-to-use-the-notwithstanding-clause-on-trans-health-bill-1.7411263>

⁷² PressProgress: BC Conservatives Threaten Use of Notwithstanding Clause If Courts Rule Involuntary Care Violates Human Rights. <https://pressprogress.ca/bc-conservatives-threaten-use-of-notwithstanding-clause-if-courts-rule-involuntary-care-violates-human-rights/>

Transphobia in schools

See [Recognizing Transphobia](#) for more information on transgender students and examples of transphobic attacks.

Some systemic forms of transphobia in schools include:

Database management practices

- Databases that require a person specify their gender, and then offer only “male” or “female” as options
- Databases may not make it possible for a trans person to specify a name other than the name on their birth certificate or to change their name
- Unless the student and employee databases that the district uses make provision for a change to gender markers throughout the system or a change to one’s name throughout the system, that system is transphobic. Every time a student or employee is misgendered, every time they are called by their **deadname**, they suffer harm

Deadnaming is the act of calling a transgender or non-binary person by their birth name after they have chosen a new name.

Facilities

- Change rooms labelled as only “male” or “female”
- Washrooms labelled as only “male” and “female”

Gendered activities

- Any activity which separates people into ‘male’ and ‘female’ or ‘boys’ and ‘girls’ automatically excludes nonbinary trans people
- Any explicit or implicit rule that sorts people based on the sex they were assigned at birth, instead of by their gender identity
- See LAT’s resource [Accommodating Trans Students in School Extracurricular Activities](#) for more information on extracurricular activities, especially school sports

Failure to reference trans people

- This ranges from salutations (“ladies and gentlemen”; “boys and girls”, “Mr./Miss/Mrs/Ms”, etc.) to curriculum that only refers to “males” and “females”

Even when policies and practices are not developed with an intention to harm anyone, they do actively harm transgender people and are therefore discriminatory.

Transphobia directed at school boards

As discussed in [Chapter 3](#), school boards have faced many disruptions by transphobic people in recent years. School board meetings have been disrupted by attempts to draw attention to the board’s actions, or perceived inactions, in relation to trans students, teachers or staff, or in relation to extracurricular activities such as gendered sports or drag queen story hour. There have also been organized campaigns attempting to eradicate [SOGI](#) (sexual orientation and gender identity) education and to target teachers who integrate SOGI into their curriculum.

Transphobic people targeting the school system have:

- Disrupted school board elections
- Run for trustee positions
- Disrupted school board meetings⁷³
- Picketed at schools⁷⁴
- Targeted trans or SOGI-supportive teachers⁷⁵
- Opposed SOGI generally

⁷³ CBC News: Hundreds gather at school board meeting, parents speak out about policies for transgender students.
<https://www.cbc.ca/news/canada/ottawa/ocdsb-school-meeting-transgender-students-parents-ottawa-1.6793870>

⁷⁴ BC Gov News: Access zones now in place to protect kids at school.
<https://news.gov.bc.ca/releases/2024FCC0028-000850>

⁷⁵ Lawyers against Transphobia is representing a teacher who was doxed online by the parent of a student at their school.

- Attacked SOGI content in school libraries^{76 77}
- Opposed transwomen in school sports

For example, in 2022, a group called Action4Canada accused the Kelowna school district of criminal activity for “sexually grooming children” and attacked the school superintendent for “deceiving the public” about SOGI resources.⁷⁸ The school board trustees reacted strongly, condemning the Action4Canada release.

In Mission, a “SOGI myth-busters” event⁷⁹ was shut down after only about twenty minutes because of anti-SOGI disruption, including by a man with a megaphone.⁸⁰ Hundreds of anti-SOGI demonstrators disrupted an Abbotsford School Board meeting.⁸¹ Anti-SOGI protesters crashed a Surrey School Board meeting.⁸²

In 2023, there were coordinated rallies across the country to protest against trans inclusion in schools. Arrests were reported in B.C., Ontario, and N.S., including for “inciting hatred” by “displaying hateful materials”. In response to the demonstrations, some school boards issued statements affirming their policy of welcoming trans students.⁸³

⁷⁶ See *Burjoski v Waterloo District School Board*, discussed in “Divisional Court Affirms High Degree of Deference to School Board Decisions” <https://canliiconnects.org/en/summaries/93842>.

⁷⁷ CBC News: How turfing SOGI and banning books became part of B.C.’s election. <https://www.cbc.ca/news/canada/british-columbia/sogi-123-sexual-education-b-c-election-2024-1.7333988>

⁷⁸ iNFOnews: Kelowna school trustees lash out at 'dangerous disinformation' on sexual orientation material. <https://infotel.ca/newsitem/kelowna-school-trustees-lash-out-at-dangerous-disinformation-on-sexual-orientation-material/it94365>

⁷⁹ Victoria News: BC Human Rights Tribunal will hear *BCTF vs. Neufeld* online hate speech case. <https://www.vicnews.com/news/bc-human-rights-tribunal-will-hear-bctf-vs-neufeld-online-hate-speech-case-7477679>

⁸⁰ City News: Mission school district ‘SOGI Mythbusters’ event turns to chaos. <https://vancouver.citynews.ca/2023/11/30/mission-sogi-misinformation-school/>

⁸¹ City News: Abbotsford school trustee speaks out after anti-SOGI protest disrupts board meeting. <https://vancouver.citynews.ca/2023/09/28/abbotsford-sogi-protest-school-board/>

⁸² PressProgress: Surrey teachers speak out against misinformation around 2SLGBTQ+ education in BC schools. <https://pressprogress.ca/surrey-teachers-speak-out-against-misinformation-around-2slgbtq-education-in-bc-schools/>

⁸³ CBC Kids News: Why people protested LGBTQ+ education in schools. <https://www.cbc.ca/kidsnews/post/thousands-across-canada-rally-for-and-against-lgbtq-rights-and-policies>

In Vernon in December 2023, a transphobic speaker on the speakers' list refused to sit down when her time ended and instead continued to talk about her opposition to SOGI. The chair tried unsuccessfully to end her presentation. Eventually, the school board left the meeting en masse, turned off the lights, and called the police.⁸⁴

Burjoski v Waterloo Region District School Board

In 2022 Carolyn Burjoski, a retired teacher in Waterloo, Ontario, began a presentation to the school board. Following policy, she had registered to be a speaker, saying that she wanted to address “transparency regarding the library” and the policy “which states that we as teachers must not disclose a student’s transgender status to their parents”. She was given permission to speak only to the transparency issue. However, when she made her oral presentation, she addressed books that deal with gender identity. The chair admonished her with respect to her statements violating the *Human Rights Code* and finally stopped her presentation. A court upheld that course of action.⁸⁵

Burjoski later filed a defamation suit against the chair of the school board, responding to comments in the media characterizing what she had said at the school board meeting. The school board responded with an application to dismiss the action as vexatious. The court permitted the defamation action to proceed. On appeal, the Ontario Court of Appeal upheld Burjoski’s right to continue her action for defamation.⁸⁶

“Finally, the harm allegedly suffered is serious enough that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the defendant’s expression. The media coverage went world-wide. The plaintiff alleges serious damage to the reputation that she spent decades establishing and emotional distress that led to physical harm.”

As of June 2025, there is no further reported decision. School boards and superintendents need to be cognizant of the law of defamation in dealing with transphobia. Filing a defamation action has become such a common strategy against equity-seeking groups that B.C. has created a law specifically to deal with the issue: the [Protection of Public Participation Act](#), SBC 2019, c 3.

⁸⁴ The Free Press: VIDEO: Protesters shut down B.C. school board meeting.

<https://www.thefreepress.ca/news/video-protesters-shut-down-bc-school-board-meeting-7289411>

⁸⁵ *Burjoski v Waterloo Region District School Board*, 2023 ONSC 6506.

<https://www.canlii.org/en/on/onsc/doc/2023/2023onsc6506/2023onsc6506.html>

⁸⁶ *Burjoski v. Waterloo Region District School Board*, 2024 ONCA 81.

<https://www.canlii.org/en/on/onca/doc/2024/2024onca811/2024onca811.html>

In 2024, a student in the Renfrew County Catholic District School Board was suspended for 20 days for discriminatory conduct, and later excluded for the balance of the school year. The student had made inappropriate comments to trans students, continued to use their deadnames, argued that trans students posed a risk to other students in washrooms, commented inappropriately about trans students on social media, and used a derogatory term to refer to a trans students. The student applied for judicial review of that decision, arguing that the measures discriminated against him on the basis of his religion, but the court refused his application.⁸⁷

Discriminatory statements about transgender people

A discriminatory statement against trans people is one which is likely to cause harm to trans people. The intent of a speaker is irrelevant to a determination of whether a statement harms people.

Discriminatory statements about transgender people include:

- misgendering someone (refusing to use the pronouns of their gender identity)⁸⁸
- suggesting that transgender people are pedophiles or “groomers”
- claiming that gender identity does not exist
- claiming that there are “only two sexes”
- deadnaming someone (insisting on using the name they were given at birth instead of the name they go by)
- suggesting that transgender people pose a danger in washrooms
- suggesting that trans girls or women should not play on school teams
- saying that being trans is “a phase”⁸⁹

If a speaker at a school board meeting is making statements of this kind, the chair must not permit them to continue speaking.⁹⁰ If the chair permits the continuation of

⁸⁷ *Alexander v Renfrew County Catholic District School Board* 2024 ON SC 6444.
<https://www.canlii.org/en/on/onsc/doc/2024/2024onsc6444/2024onsc6444.html>

⁸⁸ *Nelson v Goodberry Restaurant Group* 2021 BCHRT 137.
<https://www.canlii.org/en/bc/bchrt/doc/2021/2021bchrt137/2021bchrt137.html>

⁸⁹ Healthline: How to Recognize Transphobia — and What to Do Next.
<https://www.healthline.com/health/transphobia#examples>

⁹⁰ In *Burjoski v Waterloo Region District School Board*, a court upheld the determination by the chair of a school board to stop a citizen’s presentation to a school.

transphobic speech, they may themselves be liable for a breach of the discriminatory speech provisions of the *Human Rights Code*.

Responses to transphobia against school boards

In response to the disruptions at schools, B.C. has enacted the [Safe Access to Schools Act](#), which mandates the creation of access zones around schools. In an access zone, it is prohibited to block passage to or from the school, disrupt an educational program, participate in a protest, engage in interference, or intimidate a person. Access zones have been established by regulation in almost all anglophone public school boards. The law is set to expire on July 1, 2026.

A school board will look to their superintendent to advise them about how to deal with disruptions. This section summarizes the kinds of corrective actions that a board can take. Also see [Chapter 3](#) of this handbook.

If there is a disruption in a school board meeting, the chair has the right under s. 70(1) of the *School Act* to expel the disrupter, and under s. 69(2) to refuse to permit them to come to another meeting. And a person who “disturbs, interrupts or disquiets” a school board meeting commits an offence.⁹¹

The Mission school district banned Action4Canada, an anti-LGBTQ group, from presenting at its meetings following an “inappropriate” presentation at a Zoom meeting that included graphic cartoon images.⁹² During the meeting, the chair requested the group take the images down. When they refused, the chair turned the presentation off. The school board passed a motion declining to recognize any delegation from Action4Canada, and had the RCMP attend the next meeting in anticipation of a possible further disruption.

School boards have adopted various preventive measures, including:

- requiring people who want to be on the speakers’ list to specify in advance what they are going to say
- putting time limits on speakers
- changing the format of meetings from in-person to online

⁹¹ *School Act* SBC 2024 c 18 s. 70(3). Such an offence would be prosecuted under the *Offence Act*.

⁹² CTV News: Mission school district bans anti-LGBTQ group from presenting at meetings after graphic slideshow.

<https://www.ctvnews.ca/vancouver/article/mission-school-district-bans-anti-lgbtq-group-from-presenting-at-meetings-after-graphic-slideshow/>

A school board chair must prevent speakers from advancing discriminatory, transphobic views. It is a violation of the *Human Rights Code* to permit statements that are likely to expose a person to hatred or contempt on the basis of a protected ground, including gender identity or sexual orientation.⁹³

School boards' responsibility to address transphobia

One of the responsibilities of superintendents is to understand the legal environment for school boards dealing with transphobia and to ensure that schools in the district meet those standards.

In this section, we will explain:

- The laws binding on school boards as the constraints relate to ensuring safety and human rights for trans folk in the education system
- How those laws interact with existing policy and policy development

Generally, you will have inherited a suite of policies that were developed to operationalize the board's legal duties. If the existing suite of policies is inadequate, incomplete or in some way offends either the laws governing schools or the collective agreements that have been negotiated, you will need to develop revised draft policies for your board to adopt.

With respect to addressing transphobic harassment or violence in the school district, the relevant provincial laws are the *Human Rights Code* (which covers discrimination, harassment, and 'hate speech') and the *Workers Compensation Act* (which covers workplace bullying and harassment), the *Freedom of Information and Protection of Privacy Act*, along with of course the *School Act*. The federal *Criminal Code* may come into play if there is violence or hate speech.

Human Rights Code

The B.C. [Human Rights Code](#) imposes a duty on school boards not to discriminate, or to permit discrimination, against employees or students in the district.⁹⁴ That includes a duty

⁹³ *Human Rights Code* RSBC 1996 c 210 s 7,

<https://bchumanrights.ca/resources/hate-speech-qa/#hate-speech-and-the-law-3-do-the-laws-again-st-hate-speech-include-all-forms-of-expression>.

⁹⁴ Full text of the B.C. *Human Rights Code* [RSBC 1996] chapter 210 is at

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96210_01.

to ensure that it does not permit harassment or hate speech against its students or employees.

In general, human rights protections of a marginalized group against discrimination mean that the marginalized person with specific needs is not required to adapt to the service provider; the service provider is required to adapt to make their services accessible to the marginalized person. The prototype example is a person with a disability who uses a wheelchair. It is not up to that person to figure out how to navigate stairs at a school. It is up to the school board to provide a way in for a wheelchair user.

The service provider or employer is required to take steps to the point of “undue hardship” to avoid a negative impact on people marginalized by one of the grounds of discrimination. This is called the **duty to accommodate**.

Take the example of a person with a mobility impairment who wants to access a community service. If the service provider rents space on the third floor of a building with no elevator, and if it was structurally impossible to put in an elevator, the community service would not be in breach of its duty to the person using a wheelchair by continuing to occupy the third-floor office, though the duty to accommodate might mean they had to rent an accessible space to see people with disabilities somewhere else.

There are several areas where a school board might be structurally discriminating against trans students, staff, teachers or administrators (see [Transphobia in schools](#)).

In *Ontario College of Teachers v Francesco D’Onofrio*, the Ontario College of Teachers suspended a teacher’s licence for seven months for transphobic statements and actions.

4. Between September 2017 and February 2018, amongst other inappropriate comments, the Member:

(a) said to a student of [XXX] background who was asking for assistance in [XXX] class, “you are [XXX], why would you need help in [XXX]? You should be good at [XXX];”

(b) while giving a test back, told a student of [XXX] background to “open a [XXX] shop;”

(c) after observing a female student working while a male student was not, commented “oh great, a woman working... just like how it is supposed to be right;”

(d) said to some students in his class “hey guys, I heard something funny, women are equal to men;”

(e) told his class that he did not want to attend a staff meeting regarding an 2LGBTQT+ [sic] presentation because he thought it was a waste of time.

5. On February 15, 2018, following a School assembly on sexual identity and the 2LGBTQT+ [sic] community, the Member:

(a) looked at the attendance sheet and asked various students, what gender they “felt like being today? A female or a male?”

(b) told a student he was angry that his taxes were going to pay for surgeries for transgender people.

6. The above-noted comments were made in the classroom and were upsetting to a number of students.⁹⁵

Complying with the *Human Rights Code*

There are two areas of compliance to consider:

- **Structural compliance:** i.e., ensuring that facilities and policies are inclusive of, and do not discriminate against, transgender people; and
- **Behavioural compliance:** i.e., addressing transphobic behaviour by any member of the school community.

Structural compliance

Here we are talking about structural compliance with or violation of the *Human Rights Code*, rather than dealing with incidents of transphobic behaviour between people.

It is always better to be proactive than reactive.

In the human rights context, the steps to ensure that the school board is in compliance with the *Human Rights Code* would include:

- Understanding the legal requirements of the board
- Reviewing all board policies to identify:
 - Any provisions that operate in a way that discriminates against trans people

⁹⁵ *Ontario College of Teachers v Francesco D’Onofrio*
<https://oct.ca/ShowDocument.pdf?documentType=Decision&id=1925&lang=E>

- Any omissions in the policy that should be remedied to ensure that trans people are not discriminated against
 - Researching human rights-compliant policies from other jurisdictions
 - Taking the issue of legal compliance, and options for achieving compliance, to the school board ⁹⁶
- Understanding the operation of the board's databases, and whether those databases operate in any way to exclude, marginalize or endanger trans students:
 - By the way they are set up
 - By their requirements to change name and/or gender markers
 - By board policies about what information is disclosable to parents upon request, and whether those policies may harm trans students
- Developing alternatives that will protect the rights of trans students by:
 - Changing the database system
 - changing the policies entitling parents to access information about a trans student which could "out" them to their parents without their consent
 - changing the policies to enable trans students to change their names and gender markers safely
- Addressing binary washroom facilities by making trans-inclusive changes that may involve:
 - Labelling washrooms as gender-neutral
 - Developing policies allowing students to use whatever washroom most closely aligns with their gender identity
- Addressing binary changerooms by:

⁹⁶ An example of Guidelines for the Accommodation of Transgender and Gender Independent / Non-Conforming Students and Staff developed by the Toronto District School Board can be found at <https://www.tdsb.on.ca/About-Us/Innovation/Gender-Based-Violence-Prevention/Accommodation-of-Transgender-Students-and-Staff>. A Vancouver-based resource was published by Qmunity https://qmunity.ca/wp-content/uploads/2023/02/6inX9in_Campaign-Guide_Digital_Final.pdf. For a discussion of bathroom use and trans people, see the publication Advocates for Trans Equality, "Transgender People and Bathroom Issues" n.d. <https://transequality.org/issues/resources/transgender-people-and-bathroom-access>.

- Making all changerooms gender neutral
- Establishing separate change rooms, or private labelled spaces inside existing gendered change rooms, which are nonbinary^{97 98}
- Updating point of access for gym and recreation spaces that do not require passing through any gendered changerooms
- Addressing participation of trans students in sports

Note the policies of Athletics/Athletisme Canada with respect to the participation of transgender athletes in “Domestic competitions”:

- A ‘domestic competition’ is any competition, for any age group, in any of the disciplines governed by Athletics Canada held in Canada. In a domestic competition, athletes are not representing their countries, but may represent other affiliations such as clubs, regional teams, provincial/territorial teams, or corporate sponsors.”
- In a ‘domestic competition’,
 - athletes, regardless of age, may participate in any event based on the gender in which they identify. This could include, for example, local grassroots competitions, fun runs, mass participation events (apart from elite/competitive sections).
 - In registering for a domestic competition, an athlete may select the category that best reflects their gender identity and sense of self.
 - Coaches, officials, staff, and volunteers must support an athlete’s right to select a competitive category that best matches their gender identity.⁹⁹

⁹⁷ For an excellent discussion see Markus Harwood-Jones *et al.*, *Research and Recommendations on Gender-Inclusive Washrooms and Change Rooms*, Queens University August 2021. https://www.queensu.ca/hreo/sites/hreowww/files/uploaded_files/Washroom%20Report%20-%20Digital.pdf. A notable finding discussed in that report is that “Following the rollout of gender-neutral, universal changerooms at the University of British Columbia, a campus survey revealed a preference for the gender-neutral changeroom among 81.25% of all respondents.”

⁹⁸ The pioneering efforts of the Vancouver Parks Board to make all facilities accessible to trans people is described in this 2014 report, “Building a Path to Parks & Recreation for All: Reducing Barriers for Trans* & Gender Variant Community Members” <https://parkboardmeetings.vancouver.ca/2014/140428/documents/REPORT-TGVIWorkingGroupReport-2014-04-28.pdf>.

⁹⁹ Athletics/Athletisme Canada: Athletics Canada Policy on Transgender and Gender Diversity Inclusion.

Behavioural compliance

To proactively address behavioural compliance with human rights standards – to make sure that individuals in the school community understand their obligations and the consequences for failing to live up to their obligations – superintendents must ensure that all policies and procedures which govern behaviour at school:

1. Do not discriminate against trans members of the school community, and
2. Include trans people wherever there are human rights protections for members of the school community.

*Members of a school community may **discriminate** against trans people or **harass** trans people.*

Discrimination typically means treating trans people differently than their cisgender counterparts, for example, by refusing to permit them to participate in school sports according to their gender identity.¹⁰⁰

Harassment is one kind of discrimination consisting of continued unwanted actions against a person on the basis of a prohibited ground. It includes:

- spreading gossip or rumours
- vandalizing workers belongings
- sabotaging work
- aggressive threatening gestures
- verbal aggression or insults
- personal attacks based on private life, or personal traits
- cyber bullying
- targeted social isolation
- harmful initiation practices
- creation of a poisoned work environment.

<https://athletics.ca/wp-content/uploads/2023/01/Athletics-Canada-Policy-on-Transgender-and-Gender-Diversity-Inclusion-January-2023.pdf>

¹⁰⁰ Section 8 of the B.C. *Human Rights Code* states that a person must not, without a bona fide and reasonable justification, deny any accommodation, service or facility customarily available to the public on the basis of a prohibited ground such as gender identity.

It is **not** harassment to:

- manage or direct workers
- exercise normal supervisory rights and responsibilities
- engage in ordinary social contact
- mete appropriate discipline
- be grumpy
- be denied time off
- have interpersonal disagreements; etc.

WorkSafe BC defines harassment as

*...any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated is bullying and harassment.*¹⁰¹

A policy review will at a minimum involve:

- Reviewing, and if necessary revising, all behaviour-related policy statements and procedures to ensure that the policy statement/ procedure:
 - Does not directly discriminate against trans members of the school community, eg, by referring to “girls and boys” or sex-segregated activities
 - Does not discriminate against trans members of the school community by failing to specify how a policy applies to them. An egregious example would be a policy about equity and diversity, or about human rights, that didn’t explicitly protect trans community members on the grounds of gender identity or gender expression
- Ensuring that the board’s equity and diversity policy or policies:
 - Outlaw “structural discrimination” against trans people
 - Outlaw “behavioural discrimination” against trans people
 - Spell out consequences for breaches of the policy

¹⁰¹ Because workers can end up on stress leave as a result of bullying or harassment, WorkSafe governs that behaviour

- Reviewing the human rights clauses of collective agreements, and if necessary, bargaining with the relevant union for inclusion of “gender identity” and “gender expression” among the list of protected grounds.
- Training, and regularly updating training, for all members of the school community about:
 - Who transgender people are
 - What transphobia looks like
 - The harm that transphobia causes
 - The remedies, both in school and apart from school, for transphobia
 - The content of relevant school policies
- Ensuring that all members of the school community are informed about the legal right of trans members of the school community to participate without discrimination and to be safe from transphobic discrimination, including:
 - Specifying what the consequences are for transphobic discrimination, against any group in the school community: the board, the superintendent, administrators, teachers, staff, students, and parents
 - Explaining what the process is to remedy discrimination if it occurs
- Understanding the differences among groups in the school community, and how those differences bear on a response to transphobia against a member of the group.
 - Students:
 - Making it clear that students are welcome to identify as a different gender identity, adopt a different pronoun, or adopt a different name
 - Protecting trans students’ privacy in relation to the school databases by ensuring that a parental request for information will not inadvertently “out” a trans student without their consent
 - Ensuring that the trans student is safe in relation to other students, teachers and staff, and their family
 - Dealing with any complaint about transphobia as a matter of priority

- As in sexual assault or harassment, if any student is to suffer a move from the classroom, it should be the harasser and not the trans harassee that has to suffer the move
- Taking into account the possibility or likelihood that school-based consequences may trigger out-of-school retaliation
- Supporting the transgender student throughout any investigation processes, including offering counselling resources
- Ensure that any investigation is done either by a transgender person or by a cisgender person with demonstrated understanding of transphobia and the consequences of transphobia
- Following up with the student over time
- Parents
 - Respecting privacy of a trans parent, and helping the trans parent to protect their privacy
 - Deal with any complaint about transphobia as a matter of priority
 - If the harassment is outside of school, connecting the parent to the appropriate resources to address the harassment
 - Taking into account that if the trans parent is “out” they may suffer out-of-school retaliation; address that through liaison with the Parent Advisory Council
 - Supporting the trans parent throughout any investigation process, including offering counselling resources
 - Ensure that any investigation is done either by a transgender person or by a cisgender person with demonstrated understanding of transphobia and the consequences of transphobia
 - Following up with the parent over time
- Staff
 - Respecting the privacy of a trans staff person (for example, in coming out or transitioning)

- Making provision for staff to change their gender identity, name or pronouns, including:
 - Whether and how the staff person wants it announced
 - How records are kept
 - How their “deadname” is dealt with
 - Ensuring that there is an effective and timely way to report transphobia and to be protected from it
- Dealing with any complaint about transphobia as a matter of priority
- Ensuring that staff understand and can access the protections in their collective agreement
- Supporting staff who may experience transphobia by:
 - Making them aware of resources such as WorkSafe BC
 - Developing with the staff person an appropriate safety plan
 - With the consent of the teacher, advising other members of the school community of what is necessary to support the safety and participation of the trans teacher
- Following up with trans staff over time
- Ensuring that anyone accused of discrimination or harassment has their rights respected, including by conducting fair investigations
- Teachers
 - Respecting the privacy of a trans teacher (for example, in coming out or transitioning)
 - Making provision for a teacher to change their gender identity, name or pronouns, including:
 - Whether and how the teacher wants the change to be announced
 - How records are kept, including support for teachers to change their identifiers with the College and on their degrees
 - How their “deadname” is dealt with

- Deal with any complaint about transphobia as a matter of priority
- Ensuring that teachers understand and can access the protections in their collective agreement
- Supporting teachers who experience transphobia by:
 - Making them aware of resources such as WorkSafe BC
 - Developing an appropriate safety plan with the teacher
 - With the consent of the teacher, advising other members of the school community of what is necessary to support the safety and participation of the trans teacher
 - Ensuring that there is an effective and timely way to report transphobia and to be protected from it
- Ensuring that anyone accused of discrimination or harassment has their rights respected, including by conducting fair investigations
- Administrators
 - Respecting the privacy of a trans staff administrator (for example, in coming out or transitioning)
 - Making provision for an administrator to change their gender identity, name, or pronoun, including:
 - Whether and how the staff person wants it announced
 - How records are kept
 - How their “deadname” is dealt with
 - Ensuring that trans administrators understand their rights in the workplace
 - Deal with any complaint about transphobia as a matter of priority
 - Supporting administrators who may experience transphobia by:
 - Ensuring that there is an effective and timely way to report transphobia and to be protected from it
 - Making them aware of resources such as WorkSafe BC
 - Developing with the administrator an appropriate safety plan

- With the consent of the administrator, advising other members of the school community of what is necessary to support the safety and participation of the trans administrator
- Following up with trans administrator over time
- Ensuring that anyone accused of discrimination or harassment has their rights respected, including by conducting fair investigations

Assume transphobia

As the Superintendent, you should assume ambient transphobia in the community at large and in the school community. Census Canada reports that trans people experienced unwanted sexual behaviour at work at a rate far higher than their cis counterparts: 69% vs 23%.¹⁰² That does not take into account discrimination that is not sexual in nature.

A particular focus of anti-trans activists is the use of SOGI materials in schools. As the British Columbia School Trustees Association explains, SOGI is an optional learning resource to help teachers integrate information about sexual orientation and gender identity in all areas of the curriculum.¹⁰³ Be aware that it is a political strategy of anti-trans people to target school boards, teachers, staff, and SOGI in schools while using “parental consent” as camouflage for transphobia. Recent Alberta legislation makes the use of SOGI 123 materials dependent on the whim of conservatives, in addition to requiring parents to “opt in” to sexuality education.¹⁰⁴

These political strategies demonstrate that there is a growing wave of transphobia in schools.

As superintendent, don’t assume that transphobia is an occasional breach of an otherwise respected standard of behaviour. Disturbingly, transphobia is the norm.

¹⁰² StatsCAN Plus: Standing against homophobia, transphobia and biphobia.
<https://www.statcan.gc.ca/o1/en/plus/1294-standing-against-homophobia-transphobia-and-biphobia>

¹⁰³ BCSTA: SOGI Education Answers to Frequently Asked Questions by the Public
https://bcsta.org/wp-content/uploads/2018/10/2018-SOGI_Education_BCSTA-FAQs_updated_Sept2018.pdf.

¹⁰⁴ Press Progress: Smith Government’s Anti-SOGI Culture War Bill Coming Soon to Alberta Schools.
<https://pressprogress.ca/smith-governments-anti-sogi-culture-war-bill-coming-soon-to-alberta-schools/>

Assume harm

As reported by Stephen Magusiak for *Press Progress*,

A large proportion of LGB+ people in Canada experience gender-based violence in their day-to-day lives, through unwanted sexual behaviours in public spaces and at work, online harassment, as well as more overtly violent behaviours such as physical and sexual assault. These behaviours can have profound effects on mental health and well-being. When asked to self-rate their mental health, [approximately one-third \(32%\) of all LGB+ people in Canada aged 15 and older stated that their mental health was poor or fair](#). More specifically, over 4 in 10 (41%) bisexual people and one in five (20%) gay or lesbian people in Canada reported poor or fair mental health. Comparatively, poor or fair mental health was reported by over 1 in 10 (11%) heterosexual people.¹⁰⁵

Transphobic school trustees

During school board meetings

The general law governing discriminatory statements also applies to trustees at school board meetings. If a trustee is making transphobic statements, the chair must stop them. If anyone is targeted for a transphobic attack by a trustee during a school board meeting, the chair of the meeting should first warn the speaker that what they have said is transphobic and discriminatory and that the transphobic speech cannot be permitted to continue. If the speaker does not stop, then invoke the provisions in the *School Act* - a trustee may be expelled from a school board meeting for improper conduct by a majority of the trustees present at the meeting, under s. 70(2) of the *School Act*. This course of action has been upheld by the courts. See [Chapter 3](#).

Outside school board meetings

It is important to advise school trustees not only about refraining from transphobic speech inside council chambers, but also in public. If a trustee is making public transphobic comments outside of school board meetings, that trustee may be liable under section 7 of the *Human Rights Code*, which prohibits the publication of statements (which can be any communication which is not private) that are “likely to expose a person or group of persons because of the [...] gender identity or expression of that person or group of persons.”¹⁰⁶

¹⁰⁵ Ibid.

¹⁰⁶ *Human Rights Code* RSBC 1996 c 210 s. 7.

Hansman v. Neufeld

In Chilliwack, trustee Barry Neufeld made online posts criticizing a provincial government initiative designed to equip educators to instruct students about gender identity and sexual orientation. Many considered his comments to be derogatory of transgender and other 2SLGBTQ+ individuals. Glen Hansman, a gay man, teacher, and former president of a large teachers' union in the province, was prominent among the dissenting voices and made statements to media. Hansman called Neufeld's views bigoted, transphobic, and hateful; accused him of undermining safety and inclusivity for transgender and other 2SLGBTQ+ students in schools; and questioned whether he was suitable to hold elected office.¹⁰⁷

Neufeld sued Hansman for defamation. Hansman counter-sued under the *Protection of Public Participation Act*, designed to shut down litigation that is initiated for the sole purpose of limiting public debate. The Supreme Court of Canada held that Neufeld's defamation action could not go forward because the *Public Participation Act* applied.

Neufeld is currently in front of the B.C. Human Rights Tribunal with respect to a complaint about comments he made about SOGI, which included a statement that "allowing children to choose to change gender is nothing short of child abuse."¹⁰⁸

Transphobia and school board elections

A superintendent must not participate in school board elections directly or indirectly. At the same time, transphobic people are using a strategy of running for school board positions. So far, pro-trans and queer candidates are winning.

In 2022 Teri Westerby, a transman in Chilliwack, became the first transman elected to a school board in Canada. The two candidates who opposed SOGI in schools lost.¹⁰⁹

¹⁰⁷ *Hansman v. Neufeld*, 2023 SCC 14.

<https://www.canlii.org/en/ca/scc/doc/2023/2023scc14/2023scc14.html>

¹⁰⁸ CBC News: Chilliwack school board asks trustee to resign over comments about transgender children.

<https://www.cbc.ca/news/canada/british-columbia/barry-neufeld-asked-to-resign-1.4495479>

¹⁰⁹ CBC News: Chilliwack elects transgender man to school board known for anti-SOGI controversy. <https://www.cbc.ca/news/canada/british-columbia/teri-westerby-chilliwack-school-board-trustee-transgender-1.6618734>

If a person is running for school trustee and makes transphobic statements, *anyone* may make a hate crime report to the local police office¹¹⁰ or file a complaint under the *Human Rights Code* for discriminatory speech.

If a candidate for school board trustee requests advice from the superintendent about being targeted by transphobia, the superintendent should scrutinize the facts of the situation and, if it affects the school board as a whole, report to the school board; as well as advise the candidate to seek legal advice.

The superintendent must never advise a candidate how to deal with transphobia.

When you are the target

Superintendents also have the right to freedom from transphobia

Like every other employee of a school board, you have the right to an environment free of transphobia. However, because the superintendent is the top executive reporting to the school board, it is also, your responsibility to address transphobia when it arises in the district.

Personalized attacks against you as superintendent (whether or not you are trans) may happen, for example, if:

- a transphobic person thinks that you are responsible for the policies or actions of the district or the school about accommodating transgender students or employees,
- a transphobic person is unhappy with the way you dealt with an incident of transphobia.

A disgruntled parent, student, staff or teacher who has been involved in an incident of transphobia that has been escalated to the office of the superintendent may:

- call you transphobic names
- say that you are 'woke' and therefore responsible for ruining a generation of children by insisting that trans students have the right to be respected, included and accommodated
- picket your office
- make transphobic charges against you in a school board meeting
- organize a letter writing or phone call campaign to the school board

¹¹⁰ *Criminal Code* (R.S.C., 1985, c. C-46) <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-319.html>

- take any number of other actions intended to smear you for doing your job.

If the attack happens in a school board meeting, the chair should invoke the powers they have to shut down the speaker, or ultimately the meeting. See [Chapter 3](#).

If the events happen during the workday, you are entitled to expect that the school board will take effective steps to address the situation.

A transphobic attack on a superintendent is, indirectly, an attack on the school board.

Although superintendents, by the nature of their job, are accustomed to being disrespected, berated, called out, or maligned in the course of their work, and may as a general strategy choose not to respond, **a transphobic attack should be treated as requiring an immediate and urgent response.**

Taking action

If you are transgender, consider whether you should address the transphobia yourself or have someone from the board to respond. You may be in a conflict of interest as the person attacked, on the one hand, and the person with the power to do something about it, on the other.

You may want to seek legal assistance through the [B.C. School Superintendents Association \(BCSSA\)](#) before contacting the board.¹¹¹

Report it in writing

You should initially make a written report to the chair of the school board, including a description of the facts, any steps you have taken to deal with the transphobia, and any further steps that you think are warranted. It is helpful to include:

- the school board's past experience with transphobia
- what has been done to address other transphobic incidents
- if the perpetrator is an employee of the board
- what the appropriate disciplinary framework and procedures are (e.g., under collective agreements), and

¹¹¹ BCSSA AP 102 - Legal Assistance:

<https://bcssa.org/wp-content/uploads/2024/04/AP-102-Legal-Assistance-.pdf>

- any policies, either specific to trans people or transphobia, or more generally directed to human rights protections, that the school board has adopted.

The memo's background should include the reasons why transphobic attacks need to be addressed swiftly and unambiguously. Material from this handbook may be helpful.

Potential responses

At the board or executive meeting, to avoid the appearance of unfairness, the board may want to excuse the superintendent when considering what steps to take. The board's rights and responsibilities when dealing with transphobia are outlined in [Chapter 3](#).

If the transphobic conduct is by an employee of the school board, the board, through the chair, has the power to initiate disciplinary procedures (following the provisions of any collective agreement that covers the perpetrator).

However, the board chair generally does not want to directly wade into issues of this kind. Recognizing the difficult position of the superintendent who is victimized, and would ordinarily be the person in charge of addressing a discriminatory or bullying situation, the board may want to hire a lawyer or a workplace investigator to take the lead.

It is imperative that the response be conducted in a manner that is consistent with the principles of natural justice, namely

- that the person affected should not be the person addressing the situation (this contravenes the rule against bias and ensures even-handed justice); and
- that the perpetrator have a right to be heard before any responding steps are taken. This is called the *audi alteram partem* rule – literally “hear the other side.”

The board will also want to solicit the views of a lawyer or investigator about what constitutes an appropriate disposition of the matter: if discipline is to be imposed, what discipline? Research into similar situations, and/or advice from the BCSSA, will be important.

The goal of discipline is:

- To put the offending employee on notice that their conduct is unacceptable
- To demonstrate to the school community that transphobia attracts swift consequences.

Attacks outside of a school board meeting

If a school trustee or a member of the public attacks you outside of a school board meeting – for example, by a letter of complaint to the chair of the school board, or by speaking at Parents Advisory Committee meeting – you have two options.

- You can make a report to the board with the expectation that the board will act.
- You can take private action against the transphobic person.
 - There are two main ways to do this: bringing an action for defamation or filing a human rights complaint against the person under s. 7 of the *Human Rights Code*. Both of these options are covered in [Chapter 2](#).

An example of a situation in which a superintendent could have taken action is in Kelowna, where the right-wing group Action4Canada issued a press release condemning the province-wide SOGI resource and attacking the superintendent for “deceiving the public”. That superintendent could have sued for defamation.¹¹²

Online attacks

If a principal or superintendent is harassed online, they can file a human rights complaint against the harasser under s. 7 of the *Human Rights Code*, as teacher Wilson Wilson has done.¹¹³ This procedure is outlined in [Chapter 2](#).

Lawyers against Transphobia may be able to offer summary advice about whether an attack would be enough for a successful human rights complaint.

It is generally not a good idea to get into a back-and-forth, especially online, with someone who is using transphobic terms. And it is always a bad idea to engage online without first getting legal advice. Start with the BCSSA for support and recommendations.

¹¹² Kelowna Capital News: Action4Canada accusations anger five Central Okanagan trustees <https://www.kelownacapnews.com/news/action4canada-accusations-anger-five-central-okanagan-trustees-3234943>

¹¹³ PressProgress: BC Teacher Files Human Rights Complaint Against Parent Over Transphobic Harassment Online. <https://pressprogress.ca/bc-teacher-files-human-rights-complaint-against-parent-over-transphobic-harassment-online/>

Transphobia under the guise of parental rights

The rhetoric of anti-trans activists is that they are “protecting parental rights”. This is a very effective rhetorical device – who could oppose parents protecting their kids? This language intentionally hides the fact that anti-trans activists want school boards to out trans kids to their parents, contrary to trans students’ constitutionally-protected rights, and regardless of whether or not it is safe for students to come out to their families.

Trans youth have the right to identify as they are, to have their identities respected, and to have the right to privacy at school.

There is no such thing as “parental rights” in the Constitution. But it is important to recognize and address when “parental rights” are being used as a rhetorical device. Florence Ashley’s article [Parental Rights Over Transgender Youth: Furthering a Pressing and Substantial Objective?](#) is helpful. She writes that parental rights are framed in one of two ways: that parents have authority over their children, and/or that parents are entitled, as parents, to information about their child.

Under the conception of parental rights as parental authority, parental rights refers to a “protected sphere of parental decision-making which is rooted in the presumption that parents ... are more likely to appreciate the best interests of their children and because the state is ill-equipped to make such decisions itself.” Conceived in this manner, parental rights may include self-regarding elements such as one’s “deep personal interest as parents in fostering the growth of their own children,” but remain fundamentally bound up with and limited by children’s best interests. Parental authority is one of the foundations of contemporary Canadian family law.

Under the conception of parental rights as parental entitlement, the rights of parents qua parents are independent from the child’s interests and amount to a freestanding right to make decisions for the child and exercise control over them. Subject to limits imposed by valid laws, parents have a personal and property-like interest in controlling their child regardless of whether the decisions they make further or injure the child’s interests. Parental entitlement is justified because children are an extension of their parents, and the goal of parenting would be something like “expressing one’s genes and values to and through children.” While children’s best interests may matter, they remain independent from and sometimes in competition with parental entitlement. Parental entitlement is reminiscent of earlier conceptions of children as the legal property of their parents.

Under the B.C. *Family Law Act*, parents have the **responsibility** to look after their children. Their area of responsibility is spelled out in section 41:

For the purposes of this Part, parental responsibilities with respect to a child are as follows:

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;*
- (b) making decisions respecting where the child will reside;*
- (c) making decisions respecting with whom the child will live and associate;*
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;*
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an Indigenous child, the child's Indigenous identity;*
- (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;*
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;*
- (h) giving, refusing or withdrawing consent for the child, if consent is required;*
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;*
- (j) requesting and receiving from third parties health, education or other information respecting the child;*
- (k) subject to any applicable provincial legislation,*
 - (i) starting, defending, compromising or settling any proceeding relating to the child, and*
 - (ii) identifying, advancing and protecting the child's legal and financial interests;*
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development*

The important thing to note is that parents do not have responsibility for a minor's health care if the minor can make decisions for themselves.

Section 17 of the *Infants Act* directs that it is the health care provider, not the parent, who decides whether a minor can appreciate the nature of the care they are receiving and any side effects. If the minor is capable, the health care provider must assess whether a proposed treatment is in the youth's best interest. Parents do not have the right to participate in that decision.

The rights of youth to consent to their own gender-affirming care, over the strenuous objection of a parent, was confirmed in B.C. by the Court of Appeal in the case of [*AB v CD and EF*](#).

In the school context, the "parental rights" argument is generally made as against schools: i.e., a parent has a right to information in the possession of a school about their child.

The B.C. *School Act* defines a "student record" in s. 1:

"student record" means a record of information in written or electronic form pertaining to

(a) a student or francophone student, or

(b) a child registered under section 13 with a school or francophone school,

but does not include

(c) a record prepared by a person if that person is the only person with access to the record, or

(d) a record of a report under section 14 (1) or 16 (3) (b) of the Child, Family and Community Service Act or of information that forms the basis for a report under section 14 (1) of that Act.

The *School Act* gives a student and their parents the right to examine student records.

9 (1) A student and the parents of a student of school age are entitled,

(a) on request and while accompanied by the principal or a person designated by the principal to interpret the records, to examine all student records kept by a board pertaining to that student, and

(b) on request and on payment of the fee, if any, charged under subsection (2), to receive a copy of any student record that they are entitled to examine under paragraph (a).

However, because of how the “student record” definition is worded, notes kept by a counsellor or a teacher, for example, that don’t make their way into the electronic database are private between the student and the teacher. This means parents do not have a *right* to access them.

These are important provisions for protecting the privacy of students who want to transition (adopt a different name and/or pronouns) without telling their parents. Provided that the information is not entered into a “student record” but is instead held separately in notes accessible only to one person, those notes are not disclosable.

In B.C., therefore, the takeaway about disclosure of a youth’s gender identity, name (or sexual orientation) is that **schools do not have a right to out children to their parents without the youth’s consent.**

This may literally be a life-or-death issue for a student.

One study found that sixty-two percent of Canadian parents support their trans child¹¹⁴ — so 38% do not. Because it is impossible for a trans youth to know whether or not their parents will be supportive, 35% had suicidal thoughts and 17% had attempted suicide over the previous year.¹¹⁵

Like other sensitive information such as whether a student is pregnant, queer, or having mental health struggles, information about their gender identity is private to the student. As superintendent, you may face the challenge of engaging with a parent who asserts a right to that information about their child, while respecting the child’s legal right to privacy. For more information see [Chapter 5](#).

¹¹⁴ Greta Bauer et al, “Transgender Youth Referred to Clinics for Gender Affirming Medical Care in Canada” *Pediatrics* Vol 148, Issue 5 Nov 2021.

¹¹⁵ CBC News: Study shows transgender youth have high parental support, but lack access to care. <https://www.cbc.ca/news/canada/ottawa/trans-youth-study-canada-1.6211454>

Policy Resources

This section talks about some resources for, and examples of, policy initiatives in B.C.

Ministry of Education

The Ministry of Education offers a policy guide for SOGI issues.¹¹⁶ The goals of a policy are to

- set standards for student behaviour
- outline responsibilities to respond to student behaviour
- provide for training of teachers and staff to respond to offensive student behaviour
- provide a consistent set of consequences for students who breach the student code of conduct¹¹⁷

Since December 31, 2016, all B.C. school districts and independent schools are required to include specific references to sexual orientation and gender identity in their anti-bullying policies.¹¹⁸ This directive was informed by studies that show that having SOGI-specific anti-bullying policies improves the school climate for LBGTQ and heterosexual students, reducing discrimination, suicidal ideation and suicide attempts for all students.

The B.C. Confederation of Parent Advisory Councils

Several excellent policies have been adopted by school boards around the province. The B.C. Ministry of Education has put together a sheet of goals, best practices and sample policies for use by school boards in policy development.¹¹⁹ B.C. Confederation of Parent Advisory Councils (BCCPAC) provides a list of frequently asked questions about SOGI.¹²⁰

¹¹⁶ Supporting Diverse Sexual Orientations, Gender Identities and Expressions.

<https://www2.gov.bc.ca/assets/gov/erase/documents/moe-sogi-policy-guide.pdf>

¹¹⁷ For a sample of such a policy, see the Vancouver School Board Administrative Procedures Manual Administrative Procedure 350 District Student Code of Conduct

https://media.vsb.bc.ca/media/Default/medialib/ap_350_district_student_code_of_conduct.693b6920650.pdf

¹¹⁸ BC Goc News: Sexual Orientation and Gender Identity (SOGI) in schools

<https://news.gov.bc.ca/factsheets/sexual-orientation-and-gender-identity-sogi-in-schools>

¹¹⁹ Supporting Diverse Sexual Orientations, Gender Identities and Expressions.

<https://www2.gov.bc.ca/assets/gov/erase/documents/moe-sogi-policy-guide.pdf>

¹²⁰ BCCPAC: Sexual Orientation and Gender Identity (SOGI) Inclusive Education in BC: Frequently Asked questions from Parents

The Ministry's goals for SOGI-inclusive education are:

- **Visibility:** the diversity of sexual orientations, gender identities and expressions are recognized and valued
- **Protection:** the dignity of all people across the sexual orientation and gender identity spectra is preserved and protected from harm
- **Inclusion:** equitable treatment and inclusion are a reality for people of all sexual orientations, gender identities and expressions

The ARC Foundation

The ARC Foundation was established in 2016 and played a major role in the development of the SOGI education resources now available through the Ministry of Education for all educators. Their mission is to foster awareness, respect and capacity through SOGI-inclusive K-12 education. They are based in B.C. and have curriculum offerings in Alberta and in the Yukon, with plans to move across the country.

There is a B.C. SOGI Educator Network, led by the ARC foundation, which has members from all 60 public school boards in B.C. The ARC Foundation also has a list of key components for SOGI-related policies and procedures,¹²¹ including:

- Common language
- Safety/anti-harassment
- Self-identification
- Confidentiality and privacy
- Dress guidelines
- Gender integrated and inclusive activities
- Educator training
- Non-discriminatory facilities

<https://bccpac.bc.ca/upload/2017/12/2017-11-29-BCCPAC-SOGI-FAQ-for-Parents-with-References.pdf>.

¹²¹ ARC Foundation: 10 Key Components for Policies and Procedures.

<https://www.sogieducation.org/resource/10-key-components-for-policies-and-procedures/>. There is a detailed pdf:

<http://www.sogieducation.org/wp-content/uploads/2024/08/moe-sogi-policy-guide.pdf>

It is important to recognize that the appropriate inclusion, protection, and education of transgender students requires that their needs be specifically considered when *any* school policy is developed, not only with respect to human rights or anti-bullying policies.

It might be useful to begin any recommended policy concerning trans students, teachers, staff and parents with the ARC principles as context for that policy recommendation. The extent to which ARC's policy components are recommended and are legally required in whole or in part are introduced below.

It is our view that all of the components of the ARC list of best practices are legally required under the provisions of the Human Rights Code.

Common language

The B.C. Human Rights Tribunal held in *Nelson v Goodberry* that it is discriminatory not to respect and use the pronouns which correlate with an individual's gender identity.¹²²

In that case, a coworker persistently misgendered the complainant, Jessie Nelson, who identified as nonbinary and used they/them pronouns. The coworker persistently referred to them as "sweetheart," "honey" and "pinky," though Nelson asked them to stop. Nelson complained to the manager. Four days later, they were fired. They were told at the time of termination that they "came on too strong" and were "too militant."

The Tribunal awarded Nelson a total of \$30,000 for injury to dignity, feelings and self-respect.

Safety/anti-harassment

As mentioned above, it is a requirement of the Ministry of Education that all anti-bullying policies specifically reference SOGI policies.

It is illegal to fail to include gender identity and gender expression in any policies that protect people on identity grounds. In *Vriend*, the Supreme Court of Canada added the ground of "sexual orientation" to Alberta's human rights law, over the decision of the Alberta legislature not to protect queers.¹²³ It violates the *Charter of Rights* to have a

¹²² *Nelson v Goodberry Restaurant Group Ltd dba Buono Osteria and others*, 2021 BCHRT 137.
<https://www.canlii.org/en/bc/bchrt/doc/2021/2021bchrt137/2021bchrt137.html>

¹²³ *Vriend v Alberta* 1998 CanLii 816 (SCC).
<https://www.canlii.org/en/ca/scc/doc/1998/1998canlii816/1998canlii816.html>

government-mandated anti-discrimination policy which does not extend protection to all oppressed groups.

The case summary explains the Supreme Court of Canada's reasoning:

The distinction has the effect of imposing a burden or disadvantage not imposed on others and of withholding benefits or advantages which are available to others. The first and most obvious effect of the exclusion of sexual orientation is that lesbians or gay men who experience discrimination on the basis of their sexual orientation are denied recourse to the mechanisms set up by the IRPA to make a formal complaint of discrimination and seek a legal remedy. The dire and demeaning effect of denial of access to remedial procedures is exacerbated by the fact that the option of a civil remedy for discrimination is precluded and by the lack of success that lesbian women and gay men have had in attempting to obtain a remedy for discrimination on the ground of sexual orientation by complaining on other grounds such as sex or marital status. Furthermore, the exclusion from the IRPA's protection sends a message to all Albertans that it is permissible, and perhaps even acceptable, to discriminate against individuals on the basis of their sexual orientation. Perhaps most important is the psychological harm which may ensue from this state of affairs. In excluding sexual orientation from the IRPA's protection, the government has, in effect, stated that "all persons are equal in dignity and rights" except gay men and lesbians. Such a message, even if it is only implicit, must offend s. 15(1).

Self-identification

Students, teachers and staff have the legal right to choose their name and the pronoun(s) they want people to use, and to have those choices respected. That is central to their human rights on the basis of gender identity and expression.

Confidentiality and privacy

The school board must refuse a request from a parent for release of information about their child's name and pronouns at school. It is contrary to the equality rights of students for schools to release that information without the student's consent.

The Saskatchewan government has legislated away students' right to confidentiality and privacy, explicitly targeting and endangering trans kids. Their use of the notwithstanding clause has allowed them to enact policy that violates students' *Charter* rights. This move is

profoundly dangerous, not only because it eliminates the rights of trans students, but also because it is emboldening other conservative governments to take similar action.

UR Pride is currently challenging the Saskatchewan government's right to make those changes by arguing that requiring school boards to release information about students is also a violation of section 12 of the *Charter*, which provides "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

Alberta Premier Danielle Smith has introduced a suite of transphobic laws that are even more draconian than the Saskatchewan initiatives because they also impact medical care for transgender youth. Though she intimated that she would include the notwithstanding clause to insulate those policies, she has not done so.

Smith's policies

- Ban all gender-affirming surgeries on youth under 18
- Ban the administration of puberty blockers and hormones for minors – including, at the moment, youth currently receiving puberty blockers
- Forcibly "out" trans students to parents (as Saskatchewan law does)
- Forbid schools from respecting trans students names and pronouns unless their parents agree¹²⁴
- Require schools to get Ministerial approval for any material primarily and explicitly related to gender identity, sexual orientation, or human sexuality

Such laws, policies and plans are troubling because they are advanced in complete disregard of Canada's historical protection of human rights and equality rights.

Dress guidelines

Any dress guidelines that have different rules based on a person's gender are almost certainly contrary to the protections in the *Human Rights Code* for gender expression.

¹²⁴ For a discussion of why this legislation is dangerous and unconstitutional, see Florence Ashley's article "Parental Rights Over Transgender Youth: Furthering a Pressing and Substantial Objective?" <https://albertalawreview.com/index.php/ALR/article/view/2797>.

Gender integrated and inclusive activities

Separating learners by male/female, boys/girls automatically excludes nonbinary trans students. That is the essence of discrimination: a service (in this case a classroom activity) is denied to a trans student because, having a gender identity other than “male” or “female,” is not able to participate.

Educator training

Professional development opportunities supporting school administrators, educators and support staff to learn about trans people, transphobia and how to effectively address transphobic bullying, intimidation and harassment.

Non-discriminatory facilities

Male/female gendered facilities exclude trans people. The impact for trans students, in particular, is that gendered facilities become sites of anxiety, harassment and discrimination. Trans students have even faced kidney or urinary infections because they feel forced to “hold it in” while they are at school.

Many organizations, including the Vancouver Parks Board and UBC, have conducted consultations about how to address washroom issues in the context of architecture which historically offered only male/female options. The Parks Board have also dealt with the issue of binary washrooms. (See [Complying with the Human Rights Code](#)).