

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

B E T W E E N:

JORDAN PETERSON

Applicant

-and-

COLLEGE OF PSYCHOLOGISTS OF ONTARIO

Respondent

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**FRESH AS AMENDED FACTUM OF THE INTERVENERS,  
EGALE CANADA AND JUSTICETRANS  
(Application for Judicial Review, returnable June 21, 2023)**

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May 29, 2023

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## **PART I - OVERVIEW**

1. The trans community faces historic and ongoing marginalization in Canadian society, specifically in the context of healthcare. Trans individuals encounter stigma and prejudice when accessing healthcare, resulting in delayed or denied care and poorer health outcomes.
2. Health profession regulators have a statutory mandate to ensure an inclusive and equitable healthcare system. This statutory mandate includes taking action to address conduct by members that perpetuates discrimination, misinformation, or that otherwise causes harm.
3. Egale Canada (“Egale”) and JusticeTrans submit that when a regulated health professional makes anti-trans public comments (whether in the form of discriminatory speech or misinformation), a health profession regulator has the authority to intervene in the public interest to prevent harm to the public and to the profession. This authority is particularly important in regulating psychologists, who act as gatekeepers to essential healthcare for trans people.
4. Egale and JusticeTrans also submit that a regulated health professional’s right to free expression under s. 2(b) of the *Charter* is not unfettered and must be weighed against countervailing interests, including the *Charter* rights of vulnerable and marginalized stakeholders.

## **PART II - LAW AND ARGUMENT**

### **A. Anti-Trans Public Comments by a Regulated Professional are Harmful to Trans People**

5. The harm caused by a regulated professional making anti-trans public comments is rooted in the deep historical and ongoing marginalization of the trans community.

#### **1. *Marginalization and Disadvantage of the Trans Community in Society***

6. Courts and tribunals across the country have recognized the pervasiveness of trans marginalization in Canadian society, describing trans people as: facing “extreme social stigma and

prejudice in our society”;<sup>1</sup> being “historically disadvantaged”;<sup>2</sup> being “among the most marginalized in our society”;<sup>3</sup> and suffering “levels of discrimination, harassment and violence unmatched by other minority groups”.<sup>4</sup> The Superior Court of Ontario has noted that “the bias against transgender people is complex and insidious as it is in the case of racial prejudice”.<sup>5</sup>

7. As a result of this marginalization, trans people face barriers to employment and housing, unequal access to healthcare and other vital public services, and heightened risks of targeted harassment and physical violence.<sup>6</sup> For example, the Ontario Court of Appeal has recognized that trans people “encounter challenges in accessing appropriate healthcare, hormonal treatments and transition-related services.”<sup>7</sup>

8. Some trans people avoid seeking medical help due to the fear that they will be met with “[c]onfusion, misunderstanding and intolerance”.<sup>8</sup> Others are flat out denied care.<sup>9</sup> This is consistent with Statistics Canada data showing that 65% of trans and non-binary people had poor

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<sup>1</sup> *X.Y. v. Ontario (Government and Consumer Services)*, 2012 HRTO 726 [“X.Y.”], at [para. 164](#).

<sup>2</sup> *Ibid*; *T.A. v. Manitoba (Justice)*, 2019 MBHR 12, at [para. 24](#).

<sup>3</sup> *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 [“Oger”], at [para. 62](#).

<sup>4</sup> *C.F. v. Alberta (Vital Statistics)*, 2014 ABQB 237, at [paras. 45-46](#), where the Court summarized the uncontradicted expert testimony that removed “any doubt about the disadvantaged position of transgendered persons in our society”.

<sup>5</sup> *R. v. K.P.*, 2023 ONSC 57, at para. 55, Abbreviated Book of Authorities [“BOA”], Tab 1. The Ontario Human Rights Commission also describes trans people as “one of the most disadvantaged groups in society”; see OHRC, April 14, 2014, *Policy on preventing discrimination because of gender identity and gender expression*, online: <https://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression>.

<sup>6</sup> *Oger*, *supra* note 3, at [para. 62](#).

<sup>7</sup> *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393 [“*Christian Medical*”], at [para. 140](#). These challenges have included historic barriers in accessing gender confirming surgery, which is now recognized in Ontario as medically necessary, but which requires assessment by a designated health professional (e.g. psychologists); see Ontario Ministry of Health, *Gender confirming surgery*, online: <https://www.ontario.ca/page/gender-confirming-surgery>. Trans people have also had to combat against harmful conversion therapy, which is now discredited and declared unlawful under the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 [“*RHPA*”], [s. 29.1](#) in 2015 and declared illegal in 2022 under the *Criminal Code*, R.S.C. 1985, c. C-45, [s. 320.102](#).

<sup>8</sup> *Centre for Gender Advocacy c. Attorney General of Quebec*, 2021 QCCS 191, at [para. 17](#).

<sup>9</sup> See also *X.Y.*, *supra* note 1, at [para. 164](#).

to fair mental health compared to 11% of the general population.<sup>10</sup>

## 2. *Types of Speech that are Harmful to Trans People*

9. The stigma and prejudice that continues to oppress trans people lies in the false proposition that we should continue to debate and deny their existence as a purported matter of political opinion,<sup>11</sup> and that their gender identity in and of itself is invalid.<sup>12</sup> Stigma and prejudice against trans people is often perpetuated in the form of anti-trans speech, including (but not limited to) transphobia, discrimination, and the spread of misinformation. Such forms of speech are distinct from political speech and perpetuate the marginalization of the trans community:

- a. **Transphobia** is defined by the Ontario Human Rights Commission as “the aversion to, fear or hatred of trans people and communities. Like other prejudices, it is based on stereotypes that are used to justify discrimination, harassment and violence.”<sup>13</sup>
- b. **Discrimination** is a broad concept that includes “when a person experiences negative treatment or impact, intentional or not”, on the basis of a protected ground, including gender identity and expression.<sup>14</sup> One form of discrimination is treating an individual in

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<sup>10</sup> Statistics Canada, April 27, 2022, *Canada is the first country to provide census data on transgender and non-binary people*, online: <https://www150.statcan.gc.ca/n1/daily-quotidien/220427/dq220427b-eng.htm>.

<sup>11</sup> Oger, *supra* note 3, at [para. 120](#).

<sup>12</sup> Oger, *supra* note 3, at [para. 157](#); X.Y., *supra* note 1, at [para. 171](#).

<sup>13</sup> OHRC, January 31, 2014, *Policy on preventing discrimination because of Gender Identity and Gender Expression*, online: <https://www.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20because%20of%20gender%20identity%20and%20gender%20expression.pdf> [*“OHRC Policy”*]. Egale Canada has published a guide on types of comments that are transphobic; see: Egale, *What Constitutes Transphobic and Cisnormative Bullying and Harassment*, online: [https://egale.ca/wp-content/uploads/2019/11/what\\_constitutes\\_final.pdf](https://egale.ca/wp-content/uploads/2019/11/what_constitutes_final.pdf).

<sup>14</sup> *OHRC Policy*, *supra* note 14. Gender identity or expression is a prohibited ground of discrimination under the [Canadian Human Rights Act, R.S.C., 1985, c. H-6](#) and Ontario’s [Human Rights Code, R.S.O. 1990, c. H.19](#). Discrimination can also progress to the level of hate speech if it is “likely to expose a person or persons to detestation and vilification on the basis of a prohibited ground of discrimination”; see *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 [*“Whatcott SCC”*], at [paras. 55-59](#).



a manner not consonant with their inherent dignity,<sup>15</sup> including using one’s former name<sup>16</sup> and refusing access to a washroom consistent with one’s gender identity.<sup>17</sup>

- c. **Misinformation** has a plain meaning – it is the act of giving wrong information. Disseminating false information about trans people’s identities and health needs fuels their marginalization. To determine what constitutes misinformation, courts should look to relevant national or international authorities (such as the Canadian Psychological Association or the World Professional Association for Transgender Health).<sup>18</sup>

10. These forms of anti-trans rhetoric are far outside the realm of political comment or public debate. As described by the B.C. Human Rights Tribunal, “the question of whether transgender people exist and are entitled to dignity in this province is as valuable to ongoing public debate as whether one race is superior to the other.”<sup>19</sup> Such anti-trans public comments serve no purpose other than to perpetuate harmful and demoralizing stigma and prejudice against the trans community<sup>20</sup> – the same stigma and prejudice that underlie the overwhelming barriers trans people face in accessing supportive healthcare. As stated by the Supreme Court in *Whatcott*, framing speech as within a public policy debate does not cleanse it of its harm.<sup>21</sup>

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<sup>15</sup> *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327 [“*Kempling*”], at [paras. 29-35](#).

<sup>16</sup> *R v. Lopez*, 2021 ABQB 247, at [para. 37](#). Calling a trans person by their birth name when they have changed their name as part of their gender transition is called “deadnaming”. Deadnaming denies one’s identity and existence as a trans person, perpetuates trans marginalization, and causes safety risks and psychological harm. See *Oger*, *supra* note 3, at [para. 233](#).

<sup>17</sup> *Lewis v. Sugar Daddys Nightclub*, 2016 HRTO 347, at [paras. 45-50](#).

<sup>18</sup> *X.Y.*, *supra* note 1, at [para. 221](#), where the HRTO recognizes WPATH as “the internationally recognized authority in transgender health that developed the Standards of Care”.

<sup>19</sup> *Oger*, *supra* note 3, at [para. 119](#).

<sup>20</sup> *Kempling*, *supra* note 16, at [para. 77](#).

<sup>21</sup> *Whatcott SCC*, *supra* note 15, at [para. 116](#).

## **B. The CPO Has a Statutory Mandate to Regulate Anti-Trans Public Comments**

11. The CPO, as with all health profession regulators, has a broad statutory mandate to protect the public interest under the *Regulated Health Professions Act* (“*RHPA*”).<sup>22</sup> Under the *RHPA*, the CPO has a statutory duty to: (1) “ensure that people of Ontario have access to qualified, skilled, and competent regulated health professionals”; (2) “develop, establish and maintain standards of professional ethics for the members”; and (3) “promote and enhance relations between the College and its members, other health profession colleges, key stakeholders, and the public.”<sup>23</sup>

12. Courts have recognized that a professional regulator is within its statutory mandate when regulating public comments made by its members that constitute discriminatory speech<sup>24</sup> or health misinformation,<sup>25</sup> particularly when the member relies on their professional credentials.<sup>26</sup>

13. For instance, in *Kempling*, the B.C. Court of Appeal recognized that the College of Teachers had a statutory mandate to regulate speech by one of its members who published discriminatory and homophobic comments in his local newspaper in conjunction with his professional status as a teacher.<sup>27</sup> The Court determined that the regulator was not required to identify harm to specific individuals, but rather that the comments in themselves were harmful because they “undermine access to a discrimination-free school system.”<sup>28</sup>

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<sup>22</sup> *Health Professions Procedural Code*, Schedule 2 to *Regulated Health Professions Act*, 1991, SO 1991, c 18 [“*Health Professions Procedural Code*”], [s. 3\(2\)](#); see also *Pitter v. College of Nurses of Ontario*, 2022 ONSC 5513 [“*Pitter*”], at [para. 11](#). The Supreme Court has stated that the functional values underlying the healthcare system include the “promotion of health”, see *Eldridge v. British Columbia (Attorney General)*, 1997 CanLII 327 (SCC), at [para. 59](#).

<sup>23</sup> *Health Professions Procedural Code*, [ss. 2.1](#), [3\(1\)5](#), and [3\(1\)8](#).

<sup>24</sup> *Kempling*, *supra* note 16.

<sup>25</sup> *Pitter*, *supra* note 24.

<sup>26</sup> [Whatcott v. Saskatchewan Association of Licensed Practical Nurses, 2008 SKCA 6](#) [“*Whatcott SKCA*”], where discipline was quashed on the basis that the professional did not identify himself as a nurse.

<sup>27</sup> *Kempling*, *supra* note 16, at [para. 37](#).

<sup>28</sup> *Kempling*, *supra* note 16, at [para. 79](#).

14. Similarly, in *Pitter*, the Divisional Court recognized that the College of Nurses was within its statutory mandate when imposing remediation on its members who shared misinformation about COVID-19 on social media using “their platform as healthcare providers”.<sup>29</sup> The Court noted that the regulator had an interest in safeguarding the public and the reputation of the profession from health misinformation by members “publicly identify[ing]” as registered nurses.<sup>30</sup>

15. As in *Kempling* and *Pitter*, Egale and JusticeTrans submit that the CPO’s statutory mandate includes regulating members who make public comments that are discriminatory, contain health misinformation, or otherwise cause harm to the public or the profession.<sup>31</sup> Anti-trans public comments by a regulated health professional harm both the public interest and the profession, thereby creating a clear nexus to the profession.

16. First, anti-trans public comments made by a regulated health professional undermine access to a discrimination-free healthcare system. As in *Kempling*, broadly disseminated transphobic comments (like homophobic comments) “present an obstacle” to trans people accessing discrimination-free healthcare. Such comments make clear to any existing or potential patients that they will not receive discrimination-free health services from the regulated health professional or potentially from others within the same profession.

17. Second, as in *Kempling*, it is not difficult to infer that anti-trans public comments made by a regulated health professional using the credibility of their profession will undermine the profession (and the healthcare system) as a whole if left unaddressed, as trans people will receive

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<sup>29</sup> *Pitter*, *supra* note 24, at [paras. 14](#) and [29](#).

<sup>30</sup> *Pitter*, *supra* note 24, at [para. 14](#).

<sup>31</sup> While Egale and JusticeTrans submit that harm directly flows from anti-trans public comments, direct evidence of harm is not required. See both *Whatcott SCC*, *supra* note 15, at [para. 129](#) and *Strom v. Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112 [“*Strom*”], at [para. 102](#).

the message that public regulators will not ensure access to a discrimination-free healthcare system. The right of patients to equitable access to healthcare services without discrimination is a basic value of our healthcare system.<sup>32</sup>

18. Public comments made by a regulated health professional under the banner of their professional title affords credibility to their speech. Much like teachers, regulated health professionals hold a position of “trust, confidence and responsibility” in society.<sup>33</sup> When their speech is anti-trans, the weight of a professional’s title furthers the marginalization of trans people.

19. Public comments made by psychologists that discriminate against and disseminate misinformation about trans people can be particularly harmful, as psychologists act as critical gatekeepers to legal rights and healthcare. Trans people are required by law to secure the support of a psychologist, physician, or designated health professional in order to apply for a legal change in sex designation<sup>34</sup> and to receive lifesaving gender affirming care.<sup>35</sup>

### **C. Charter Rights to Free Expression Must be Weighed Against Countervailing Interests**

20. Unlike members of the general public, a regulated health professional’s right to free expression under s. 2(b) of the *Charter* is subject to limitations imposed by the public interest.

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<sup>32</sup> *The Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2018 ONSC 579 (Div. Ct.), at [paras. 80-81](#), aff’d by *Christian Medical*, *supra* note 7, at [para. 166](#).

<sup>33</sup> *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 [“*Ross*”], at [para. 44](#). See also *Ross* at [para. 43](#), explaining that professionals are inextricably linked to the system they work within. See also *Pharmascience Inc. v. Binet*, 2006 SCC 48, at [para. 36](#), where the Supreme Court explained that the general public’s lack of knowledge and high level of dependence on the advice of competent professionals means that the public places great trust in them.

<sup>34</sup> Service Ontario, March 27, 2023, *Changing your sex designation on your birth registration and birth certificate*, online: <https://www.ontario.ca/page/changing-your-sex-designation-your-birth-registration-and-birth-certificate>.

<sup>35</sup> See the requirements for supporting assessments by at least two appropriately trained providers, including physicians and psychologists, Ontario Health Insurance Plan, March 9, 2023, Schedule of Benefits, Physician Services Under the Health Insurance Act, Appendix D, p. AD7-AD8, online: [https://www.health.gov.on.ca/en/pro/programs/ohip/sob/physerv/sob\\_master.pdf](https://www.health.gov.on.ca/en/pro/programs/ohip/sob/physerv/sob_master.pdf).

21. Courts have recognized that when a regulated professional asserts a *Charter* right, that right must be weighed against a number of countervailing considerations, including: (1) the fact that regulated professionals do not have a constitutional right to practice; (2) a regulator’s public interest mandate; (3) the s. 7 rights of patients and potential patients to access healthcare; and (4) the s. 15 equality rights of affected stakeholders.

**1. *No Constitutional Right to Practice***

22. Psychologists, like other regulated health professionals, do not have a common law, proprietary, or constitutional right to practice.<sup>36</sup> This consideration was recognized by the Ontario Court of Appeal in *Christian Medical* as a factor limiting the *Charter* rights asserted by doctors opposed to performing certain medical procedures on religious grounds.

**2. *Public Interest Mandate Sufficient to Limit s. 2(d) Rights***

23. Further, courts have previously allowed a regulator’s public interest mandate to limit a regulated professional’s free expression rights.

24. In *Pitter*, the Divisional Court upheld the College of Nurses’ decision to issue a remediation program against nurses who shared COVID misinformation on social media and at public demonstrations. The Court determined that the remediation program was a proportionate limitation on the nurses’ s. 2(b) right to free expression.<sup>37</sup>

25. In *Kempling*, the B.C. Court of Appeal upheld the College of Teacher’s decision to issue a one-month suspension against a teacher who published homophobic articles in his local newspaper. The Court of Appeal determined that the limitation on the teacher’s religious and

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<sup>36</sup> *Christian Medical*, *supra* note 7, at [paras. 166](#) and [187](#); *Strom*, *supra* note 33, at [para. 165](#).

<sup>37</sup> *Pitter*, *supra* note 24, at [para. 18](#).

expressive rights were proportionate, given the College’s public mandate to ensure “a tolerant and discrimination-free” environment and school system.<sup>38</sup>

26. Ensuring members do not engage in discriminatory conduct or misinformation are valid public interest objectives that can outweigh a regulated professional’s right to free expression.

### **3. Charter Right to be Balanced Against s. 7 Rights of Patients**

27. In weighing the *Charter* rights of a regulated health professional, Courts must also balance the rights of patients and prospective patients to access non-discriminatory healthcare.

28. In *Christian Medical*, the Court of Appeal affirmed the constitutionality of a College of Physician and Surgeons policy requiring doctors to provide “effective referrals” for procedures to which they were religiously opposed, including abortion, euthanasia, and gender affirming surgery. The Court held that regulated health professionals are not required to change their sincerely held views, but they cannot obstruct access to care.<sup>39</sup> The limitation on religious freedom was found to be proportionate when weighed against the s. 7 *Charter* right of patients and prospective patients to equitable access to lawful healthcare services.<sup>40</sup>

29. The right of patients (or potential patients) to equitable access to healthcare guaranteed by s. 7 of *Charter* generally outweighs a professional’s free expression interests in disseminating misinformation or discriminatory comments. As the Court held in *Christian Medical*, in the event of a conflict of rights, “the interests of patients come first.”<sup>41</sup> When anti-trans public comments

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<sup>38</sup> *Kempling*, *supra* note 16, at [para. 80](#).

<sup>39</sup> *Christian Medical*, *supra* note 7, at [para. 187](#).

<sup>40</sup> *Christian Medical*, *supra* note 7, at [para. 166](#).

<sup>41</sup> *Christian Medical*, *supra* note 7, at [para. 48](#).

are disseminated by a regulated health professional, it creates further barriers for trans people in equitable access to healthcare.<sup>42</sup>

30. Egale and JusticeTrans submit that the right of trans people to equitable access to healthcare services, as guaranteed under s. 7 of the *Charter*, is a valid and important consideration when a professional regulator is required to weigh competing *Charter* interests.

#### **4. *Charter Right to be Balanced Against s. 15 Rights of Affected Stakeholders***

31. Finally, in weighing the *Charter* rights of a regulated health professional, those rights must be balanced against the s. 15 equality interests of affected stakeholders.

32. In *Trinity Western University*, the Supreme Court noted that a regulator, as a public actor, “has an overarching interest in protecting the values of equality and human rights in carrying out its functions.”<sup>43</sup> In upholding the Law Society of Ontario’s decision not to accredit a discriminatory law school, the Supreme Court held that the law society was “entitled to consider preventing potential harm to the LGBTQ community in making a decision it is otherwise entitled to make.”<sup>44</sup>

33. *Trinity Western University* makes clear that in discharging its statutory duty, the CPO is permitted to take measures that advance the values of equality and human rights and that prevent potential harm to identifiable groups protected by the *Charter*, including trans people. Accordingly, when assessing public comments made by its members, the CPO is entitled to consider the equality and human rights interests of trans people who are adversely affected by anti-trans public comments.

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<sup>42</sup> *Christian Medical*, *supra* note 7, at [para. 140](#).

<sup>43</sup> *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 [“*Trinity*”], at [para. 21](#). See also *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, at [para. 47](#).

<sup>44</sup> *Trinity*, *supra* note 45, at [para. 25](#).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 29<sup>th</sup> day of May, 2023.



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**CERTIFICATE OF ESTIMATED TIME FOR ARGUMENT**

The interveners estimate that they will require 10 minutes for argument not including reply.

May 29, 2023



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## SCHEDULE “A” – LIST OF AUTHORITIES

1. [\*X.Y. v. Ontario \(Government and Consumer Services\)\*, 2012 HRTO 726](#)
2. [\*T.A. v. Manitoba \(Justice\)\*, 2019 MBHR 12](#)
3. [\*Oger v. Whatcott \(No. 7\)\*, 2019 BCHRT 58](#)
4. [\*C.F. v. Alberta \(Vital Statistics\)\*, 2014 ABQB 237](#)
5. *R. v. K.P.*, 2023 ONSC 57
6. OHRC, April 14, 2014, *Policy on preventing discrimination because of gender identity and gender expression*, online: <https://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression>
7. [\*Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario\*, 2019 ONCA 393](#)
8. Ontario Ministry of Health, *Gender confirming surgery*, online: <https://www.ontario.ca/page/gender-confirming-surgery>
9. [\*Centre for Gender Advocacy c. Attorney General of Quebec\*, 2021 QCCS 191](#)
10. Statistics Canada, April 27, 2022, *Canada is the first country to provide census data on transgender and non-binary people*, online: <https://www150.statcan.gc.ca/n1/daily-quotidien/220427/dq220427b-eng.htm>
11. OHRC, January 31, 2014, *Policy on preventing discrimination because of Gender Identity and Gender Expression*, online: <https://www.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20because%20of%20gender%20identity%20and%20gender%20expression.pdf>
12. Egale, *What Constitutes Transphobic and Cisnormative Bullying and Harassment*, online: [https://egale.ca/wp-content/uploads/2019/11/what\\_constitutes\\_final.pdf](https://egale.ca/wp-content/uploads/2019/11/what_constitutes_final.pdf)
13. [\*Saskatchewan \(Human Rights Commission\) v. Whatcott\*, 2013 SCC 11](#)
14. [\*Kempling v. British Columbia College of Teachers\*, 2005 BCCA 327](#)
15. [\*R v. Lopez\*, 2021 ABQB 247](#)

16. [\*Lewis v. Sugar Daddys Nightclub\*, 2016 HRTO 347](#)
17. [\*Pitter v. College of Nurses of Ontario\*, 2022 ONSC 5513](#)
18. [\*Eldridge v. British Columbia \(Attorney General\)\*, 1997 CanLII 327 \(SCC\)](#)
19. [\*Whatcott v. Saskatchewan Association of Licensed Practical Nurses\*, 2008 SKCA 6](#)
20. [\*Strom v. Saskatchewan Registered Nurses' Association\*, 2020 SKCA 112](#)
21. [\*The Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario\*, 2018 ONSC 579 \(Div. Ct.\)](#)
22. [\*Ross v. New Brunswick School District No. 15\*, \[1996\] 1 S.C.R. 825](#)
23. [\*Pharmascience Inc. v. Binet\*, 2006 SCC 48](#)
24. Service Ontario, March 27, 2023, *Changing your sex designation on your birth registration and birth certificate*, online: <https://www.ontario.ca/page/changing-your-sex-designation-your-birth-registration-and-birth-certificate>
25. Ontario Health Insurance Plan, March 9, 2023, Schedule of Benefits, Physician Services Under the Health Insurance Act, Appendix D, p. AD7-AD8, online: [https://www.health.gov.on.ca/en/pro/programs/ohip/sob/physserv/sob\\_master.pdf](https://www.health.gov.on.ca/en/pro/programs/ohip/sob/physserv/sob_master.pdf)
26. [\*Trinity Western University v. Law Society of Upper Canada\*, 2018 SCC 33](#)
27. [\*Loyola High School v. Quebec \(Attorney General\)\*, 2015 SCC 12](#)

## SCHEDULE “B” – RELEVANT STATUTES

[Health Professions Procedural Code, Schedule 2 to Regulated Health Professions Act, 1991, SO 1991, c 18](#)

ss. [2.1](#), [3](#)

[...]

### **Duty of College**

**2.1** It is the duty of the College to work in consultation with the Minister to ensure, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals. 2008, c. 18, s. 1.

### **Objects of College**

**3** (1) The College has the following objects:

1. To regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the *Regulated Health Professions Act, 1991* and the regulations and by-laws.
2. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration.
3. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession.
4. To develop, establish and maintain standards of knowledge and skill and programs to promote continuing evaluation, competence and improvement among the members.
  - 4.1 To develop, in collaboration and consultation with other Colleges, standards of knowledge, skill and judgment relating to the performance of controlled acts common among health professions to enhance interprofessional collaboration, while respecting the unique character of individual health professions and their members.
5. To develop, establish and maintain standards of professional ethics for the members.
6. To develop, establish and maintain programs to assist individuals to exercise their rights under this Code and the *Regulated Health Professions Act, 1991*.

7. To administer the health profession Act, this Code and the *Regulated Health Professions Act, 1991* as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.

8. To promote and enhance relations between the College and its members, other health profession colleges, key stakeholders, and the public.

9. To promote inter-professional collaboration with other health profession colleges.

10. To develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.

11. Any other objects relating to human health care that the Council considers desirable. 1991, c. 18, Sched. 2, s. 3 (1); 2007, c. 10, Sched. M, s. 18; 2009, c. 26, s. 24 (11).

### **Duty**

(2) In carrying out its objects, the College has a duty to serve and protect the public interest. 1991, c. 18, Sched. 2, s. 3 (2).

[...]

**JORDAN PETERSON**  
(Applicant)

-and-

**COLLEGE OF PSYCHOLOGISTS OF ONTARIO**  
(Respondent)

Court File No.: 714/22

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

Proceeding commenced at TORONTO

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