

## **SCHEDULE A: APPLICATION PARTICULARS**

### **FACTS**

#### **Introduction**

1. Josh Alexander is a resident of Cobden, Ontario. He is 17 years old. He is enrolled as a grade 11 student at St. Joseph's Catholic High School ("St. Joseph's") in Renfrew. St. Joseph's is operated by one of the Respondents, the Renfrew County Catholic District School Board (the "RCCDSB" or "School Board").
2. Josh is a "born-again", Bible-believing Christian. Josh holds many sincere beliefs, informed by the Bible, regarding gender, sexuality, and modesty, and which are described in detail below. As an overview, these beliefs are that human beings are created by God as immutably male or female, persons cannot truly "change" their gender or sex from male to female or from female to male, and it is immoral, immodest, and contrary to Scripture for biological males to enter the sex-segregated private spaces of females, such as washrooms and change rooms. Josh believes he is called by the Lord Jesus Christ to proclaim the truth which includes telling those around him about the Lord's design for gender and to openly oppose the School Board's policy of permitting males to enter the girls' washrooms. Josh believes he would commit a sin if he disregarded the Lord's calling on his life and remained silent.

#### **The Events of October 18, 2022**

3. On or about October 14, 2022, a female student informed Josh that a male student walked in while she was in the girls' washroom. She said it made her very uncomfortable and some of her peers felt the same way.
4. On October 18, during a class discussion in Josh's law class and after a school lockdown drill, Josh criticized how schools do not have security guards. The law class teacher, Annice O'Rourke, suggested the school lacked the funding. Josh opined that the school wastes money on gender-neutral washrooms even though transgender students typically do not use them. Ms. O'Rourke responded that students should be allowed to use the washroom of their choice, to which Josh replied that it is perverted for males to go into female spaces. A general discussion of transgender issues ensued and Ms. O'Rourke endorsed the idea of

transgender breastfeeding. Josh disagreed with the idea of male breastfeeding. The debate in its entirety lasted about half an hour.

5. Ms. O'Rourke suggested to the class that Josh only holds the views he expressed during the debate because he cannot personally control his "own hormones".
6. As this class discussion concluded, Josh raised his hand and asked to go to the gender-neutral washroom. Ms. O'Rourke permitted him to do so and Josh left the classroom.
7. A female student followed Josh after he left the classroom. The student informed Josh that Ms. O'Rourke had instructed her to follow Josh into the washroom to make him feel uncomfortable. Josh briefly explored the gender-neutral washroom while the female student filmed him.
8. Upon Josh's return to class, another female student informed him that, in his absence, Ms. O'Rourke had held a discussion with certain students concerning Josh's "misogynistic intolerance".
9. Ms. O'Rourke pulled aside Julie Shreenan, the vice principal, who had been in the classroom for another reason, to discuss Josh and the class discussion described above. While doing so, the female student who had filmed Josh showed Josh the footage. Ms. O'Rourke grabbed the phone from the female student's hand and demanded to see the content. Josh informed the female student she has legal protection from unnecessary search and seizure. Josh then summarized the video for Ms. O'Rourke and Vice Principal Shreenan. Vice Principal Shreenan informed Josh he is welcome in the gender-neutral washroom because the school does not discriminate. Law class ended with no further debate.
10. In a subsequent class, the topic of males in the girls' washroom came up between Josh and another female student, who expressed to Josh that males in the girls' washroom made her feel uncomfortable.
11. Later that same day, during math class, various students, including Josh, engaged in conversation regarding the earlier events during law class. The math teacher, Trent Skelhorn, interrupted and told Josh to let it go because it is none of his business. Josh stated that it became his business when he was labelled a misogynist by a teacher for saying that guys should not be allowed in the girls' washroom. Mr. Skelhorn stated that "they" are not guys.

Josh stated that guys have penises and girls have vaginas. Students then shouted at Josh, calling him a “misogynist”, a “racist”, and a “homophobic transphobe”. Mr. Skelhorn nodded and gestured at the students yelling at Josh, indicating his approval of the students’ name-calling.

12. As the yelling subsided, a female student who appeared to be a transgender student identifying as male left her seat, approached Josh, and told him that anyone can “choose their gender”. Josh responded that an individual is either a male or a female. After this, some students left the class.
13. Mr. Skelhorn then said to Josh “times have changed” and he “needs to move on”. Josh replied that right is still right and wrong is still wrong. Mr. Skelhorn responded that there are more than two genders. Josh stated to Mr. Skelhorn he is unfit to be a math teacher if he is unable to count all two of the genders. Josh then said to the class that female students have told him they are uncomfortable with males using their washroom. The class and Mr. Skelhorn mocked Josh for this statement. At times, Mr. Skelhorn became agitated and shouted at Josh. At one point, Mr. Skelhorn asked what Josh was “going to do about it”. Josh replied, “Just wait and see”.
14. Josh went on to say the agenda Mr. Skelhorn is pushing was approaching pedophilia. After being asked by Mr. Skelhorn to explain, Josh described how Mr. Skelhorn is shouting at a student about children’s sexuality. Josh then referenced Ms. O’Rourke’s earlier defense of male breast feeding. The teacher replied, “Why not”. Josh then said to the class that what the math teacher is saying is he supports grown men forcing babies to suck their nipples. As the class discussion concluded, the teacher told Josh he is pushing the reasonable limit of free speech and reminded Josh there are “hate speech” laws.
15. The next day, October 19, Josh was segregated during the math class to work in a separate room.

### **Josh’s October 20 Meeting with Principal Lennox**

16. On October 19, Josh went to the office and requested a meeting with St. Joseph’s principal, Derek Lennox, intending to discuss the issue of males in the girls’ washroom. Josh was told Principal Lennox was absent that day.

17. On October 20, Josh headed to the office to speak with Principal Lennox, and found him outside his office speaking with someone else. Josh waited while the conversation finished and then asked to speak with him. Principal Lennox stated he had been meaning to speak with Josh as well.
18. Principal Lennox alleged that Josh had used the term “tranny” during a class. Josh told Principal Lennox he did not believe he had in fact used that term. Principal Lennox told Josh he had used the term; that it is a “slang” term that was used several years ago but is not “socially appropriate” now; and that “using slang [when] chatting with [his] buddies” would be different from “using slang” at school. Josh maintained that he did not recall having used the term, agreed that being respectful is important, and argued that he had not been disrespectful during class, though Mr. Skelhorn and some students had been disrespectful and discriminatory toward him, the latter calling him “racist”, “homophobic” and “transphobic” because of his manifested beliefs concerning gender and washroom access. Josh further explained how Mr. Skelhorn had both shouted at him and encouraged the students’ slurs by gesturing his approval.
19. Josh expressed his concerns to Principal Lennox regarding guys accessing the girls’ washroom and the discomfort it was causing some female students who had confided in him. Principal Lennox stated, “[T]hey’re not guys”. Josh asked Principal Lennox if he believed there were more than two genders. Principal Lennox said, “I will never give you my personal opinion; I’m going to give you my professional response”. Josh stated, “Females don’t have penises”, to which Principal Lennox replied, “Fair enough”. Principal Lennox stated: “As far as I’m concerned, *from this office*, they’re a female”; and “I don’t think you’re very good at reading between the lines”. Josh asked Principal Lennox what he meant by that. Principal Lennox replied, “I’m not telling you because I told you I will not give you my opinion”; and “I’ve tried to hint a few times towards a few different things and you haven't picked up on it”.
20. Several times throughout the conversation, Josh explained that the girls were nevertheless uncomfortable with males entering the girls’ washroom. Principal Lennox said, “You can encourage those ladies to come speak with myself or Mrs. Shreenan.” Josh said, “I already have, they are uncomfortable doing so. They’ve asked me to do it”. Principal Lennox replied, “Then I don’t respond to crusades”. Principal Lennox stated, “If those young

individuals do want to have a conversation, I highly encourage you, I encourage you to encourage them to come speak to myself or Mrs. Shreenan. At that point I will take it as a legitimate concern”. Josh explained, “They don’t feel comfortable doing that because of the way I’ve been treated for doing so”.

21. Josh also asked Principal Lennox if he was seeking to punish him or to warn him. Principal Lennox replied it was neither, that he sought only to have a conversation about “being respectful with [his] language”. Principal Lennox also told Josh, “I believe you’re a fairly intelligent young man who’s well educated and well-versed on a number of political issues, okay? I think that’s awesome. I wish more students would be more educated. The part where we have to maybe agree to disagree is that, and once again, you believe I’ve shared my personal opinion. I’m telling you I haven’t”.

#### **The Events of October 27 – November 1, 2022**

22. Approximately one week later, on or about October 27, a female student accompanied Josh to the principal’s office so the two of them could together speak with Principal Lennox about the issue of male access to the girls’ washroom. They did this in response to Principal Lennox having taken the position he would only listen to concerns about the issue if a female student came forward. Principal Lennox refused to allow Josh into the room for the conversation. After the meeting with Principal Lennox, the female student told Josh that while Principal Lennox had politely listened to her, she did not expect he would take any action on the issue of males entering the girls’ washroom.
23. Later that same day, Josh met with Principal Lennox while Vice Principal Shreenan took notes. Josh asked Principal Lennox what action would be taken now that a female student had expressed her concerns. Principal Lennox said he would not entertain such a conversation with Josh. Josh requested a public debate between the two of them from a religious beliefs perspective, considering the school claims to recognize the supremacy of the Bible. Principal Lennox stated such a discussion could only take place with the school chaplain or a priest present. Josh offered at least four different dates in an effort to arrange such a discussion. Principal Lennox declined each date. As the meeting progressed, Principal Lennox became worried Josh may be recording the conversation. Josh neither confirmed nor denied recording the conversation. Principal Lennox told Josh he was not allowed to record.

Josh replied that only one person in a conversation is required to know that the conversation is being recorded in order for it to be lawful. Principal Lennox then ended the conversation immediately.

24. On or about November 1, Josh was again removed from his math class to write a test. When he returned to the classroom, Josh found Mr. Skelhorn gossiping behind his back about the upside-down flag on Josh's jacket. Josh overheard Mr. Skelhorn say he would like to see Josh walk into a military base like that. Josh approached Mr. Skelhorn and asked if he understood the symbolism of an upside-down flag and if he was aware that Josh's father was a veteran. Mr. Skelhorn said he was unaware of both. In response Josh suggested Mr. Skelhorn educate himself before gossiping behind students' backs. The class then ended and everyone left.

### **The Student Walkout**

25. On or about November 4, Principal Lennox called Josh into the office. Principal Lennox told Josh he had heard rumors of a potential school walkout. Before continuing the conversation, Principal Lennox requested Josh leave his phone in a locked room. Josh declined. Principal Lennox continued to demand Josh remove his phone from the room, saying they will not be able to talk unless Josh surrenders his phone. After this, Josh began to walk away. Principal Lennox then proposed that both he and Josh lay their phones on the desk to prove neither are recording. Josh agreed to this. During the discussion, Josh said a student walkout was indeed planned to take place about the issue of male student access to the girls' washroom. Principal Lennox said he wanted to work with rather than against Josh. Principal Lennox then explained that any student who partakes in the walkout will have his or her transportation revoked due to truancy, meaning such a student would be refused access to the school bus to get a ride home from school.
26. Josh understood Principal Lennox's statement about revoking access to transportation for students involved in a walkout to be a threat intended to dissuade students from participating in a walkout.
27. On or about November 16, Josh attended school for the last time before missing several days due to sickness and personal reasons.

28. On November 18 and 19, Josh announced on social media the school walkout was to take place on November 25, 2022.
29. On November 23, Josh's parents received an email informing them Josh was indefinitely suspended and that Principal Lennox was undertaking an investigation regarding Josh.
30. On November 25, at noon, the student walkout occurred. The participating students walked to the nearby intersection of Barnet Blvd and 1<sup>st</sup> Street in Renfrew. Approximately 10 students were in attendance, as was Josh, his brother, a friend and a political candidate, each of whom delivered a speech. Josh had expected potentially more student participants based on his conversations with students. The turnout was apparently lower than expected because teachers had, in the preceding days, Josh learned, discouraged students from participating. Additionally, on or about November 22, Principal Lennox had emailed all the parents and the School Board explaining that students who participated in the walkout would not have school-provided transportation home. It is unclear whether any student's transportation home was revoked, but most students who attended the walkout had planned ahead for rides home in any event.

### **The First Suspension and Conditions of Return to School**

31. On December 20, Principal Lennox wrote to Josh's parents to confirm a retroactive 20-day suspension had been issued to him. Principal Lennox mentioned the right of appeal regarding the suspension.
32. On December 21, Josh and his father met with Principal Lennox and Vice Principal Shreenan regarding the investigation undertaken by Principal Lennox. During the meeting, Principal Lennox told Josh he was welcome back to school in January 2023 on the conditions he was to have no contact with two transgender students who shared classes with him and not attend the two afternoon classes Josh shared with these transgender students.
33. After this meeting, Josh's mother requested Principal Lennox put in writing the conditions discussed at the December 21 meeting. Principal Lennox responded by email, stating three conditions which Josh would be required to adhere to upon his return to school. The additional condition was that Josh not "dead name" any transgender students. Principal Lennox did not explain what he meant by the term "dead name".

34. On December 22, Josh hired a lawyer, James Kitchen.

### **The Events of January 2023**

35. On January 5, 2023, Josh's lawyer notified Superintendent Mary-Lise Rowat of Josh's intention to appeal the suspension pursuant to section 1.1(b)(ii) of RCCDSB Policy *Pupil Suspension Appeal* (the "Appeal Policy") as a student who has withdrawn from parental control.
36. On January 6, Josh's lawyer wrote to Principal Lennox informing him the conditions placed upon Josh's return to school unlawfully discriminated against Josh on the basis of his sincere religious beliefs and that Josh would proceed to attend his afternoon classes.
37. In response, on January 8, Principal Lennox issued Josh a Notice of Exclusion pursuant to section 265(1)(m) of the *Education Act* and Regulation 474/00.
38. Josh considered Principal Lennox's actions in excluding him from his afternoon classes and then excluding him from St. Joseph's altogether to be manifestations of unlawful religious discrimination. He believes such discrimination must not be tacitly condoned by his compliance, silence, or inaction. Josh therefore decided to actively oppose such discrimination and attend his afternoon classes on January 9.
39. On January 9, Josh arrived at St. Joseph's at noon and walked into the school. Principal Lennox was standing near the entrance. When he noticed Josh, he stared at Josh for about a full minute. Josh shook hands with several students who were welcoming him back. Principal Lennox walked over to Josh and asked him what he was doing. Josh replied that he was just going to school. Principal Lennox asked if they could speak outside. Josh replied that they could speak where they were, and if they were going to speak, he wanted his lawyer to listen in.
40. When the bell rang and the lunch break ended, Josh made his way to the portable where his religion class was to take place. He started walking down the hall, past Principal Lennox and Vice Principal Shreenan. As he walked past Vice Principal Shreenan, she cut in front of Josh and speed-walked to stay ahead of him. Josh walked behind her and they arrived at the doors leading to the portable outside. They each walked outside and once the doors closed behind them, Vice Principal Shreenan asked Josh to leave. Josh kept walking and Vice Principal

Shreenan tried to block his path. She said she wanted it noted that she wanted him to leave. Students were watching. Josh kept walking and Vice Principal Shreenan had trouble keeping up with him. Josh entered his religion class without incident.

41. Inside the classroom, Vice Principal Shreenan sat down and appeared to be writing down what Josh said during the class. Josh did his work and no debates arose during the class. Josh noted the absence of a transgender student usually in attendance. The student's parent had been involved in the discipline actions against Josh, as she had indicated on social media. Josh was told by other students that the transgender student had been at school in the morning.
42. When Josh exited the classroom, Principal Lennox was apparently hiding between two portables waiting for him to walk by. Principal Lennox stated that he and Josh needed to talk. Josh agreed, on the condition he could call his lawyer. Principal Lennox refused and said they needed to talk "now". Josh said, "No, thank you", and kept walking. As Josh climbed the stairs of the portable for his next class, the teacher, Mr. Skelhorn told him he was not supposed to be there. Josh walked into the classroom and Vice Principal Shreenan attended the class, once again watching Josh and apparently writing down what he said. Before the class started, a student asked Josh why he had not been in school and mentioned he had seen Josh on the news. Mr. Skelhorn shouted, "None of that, don't talk about that". Josh explained to the student what had happened. After class ended, Josh was walking toward the washroom when Vice Principal Shreenan blocked him and told him he needed to leave. Josh said "okay" and went into the washroom. A student told Josh that while he was in the washroom, Vice Principal Shreenan was sitting on the floor outside the washroom while Josh was in there. As it was now the end of the day, Josh left the school.
43. On the evening of January 9, Principal Lennox issued Josh a second suspension for January 10-13, 2023, a trespass notice to expire January 31, 2023, and a further Notice of Exclusion for the remainder of the semester, which would expire on February 6, the first day of the second semester.
44. Josh did not attempt to attend St. Joseph's for the rest of the first semester, which concluded at the end of January and was followed by a short break.

45. Josh's lawyer wrote to the School Board's lawyers on January 20 to provide notice of Josh's intention to also appeal the suspension issued on January 9.
46. On January 23, Josh's lawyer wrote to the School Board's lawyers explaining that when Josh returned to school at the start of the second semester on February 6, he would continue to express his Christian religious beliefs regarding Biblical sexuality and gender (for example, the belief people are one of either two genders and cannot change from one gender to the other and that boys must not be permitted to enter girls' private spaces as a matter of morality and modesty). Josh's lawyer also reassured the School Board's lawyers of Josh's continued commitment to not bully any transgender student at St. Joseph's, at least as the term "bullying" has traditionally and reasonably been interpreted and applied.
47. On January 26, the School Board's lawyers responded that, upon being notified Josh intended to express his religious beliefs regarding sexuality and gender upon returning to school, Principal Lennox had determined Josh's presence at St. Joseph's would be detrimental to the physical or mental well-being of St. Joseph's students. The School Board's lawyers advised the Notice of Exclusion issued to Josh in January would remain in effect until the end of the 2022-2023 school year.

### **The Events of February 2023**

48. On February 5, 2023, Josh's lawyer wrote to the School Board's lawyer to provide notice Josh intended to appeal the School Board's decision to extend the Notice of Exclusion for the remainder of the School Year.
49. Josh considered the School Board's actions in excluding him for the rest of the school year to be a further manifestation of unlawful religious discrimination that must also not be tacitly condoned by his compliance, silence, or inaction. Josh therefore decided to actively oppose this further discrimination and attend his classes on February 6.
50. On February 6, 2023, Josh attended school for his second class of the day. Josh had been in Ottawa with friends earlier that morning, and they brought him to school. The police were in a parking lot between the elementary school and Josh's high school, which was hidden by some trees. Josh was met at the door by a student, entered the school, and walked down the hall with the student. A staff member asked Josh if he was just visiting. Josh replied that he

was going to class. The staff member stated Josh was not supposed to be there. Josh walked down the hallway and shook hands with a few students.

51. Josh arrived at his auto class as students had just taken their seats. The auto teacher instructed Josh to place his phone in the phone collection bin but Josh declined. The teacher insisted and Josh replied, "No, thank you". The phone argument went back and forth and the teacher said Josh was making an issue out of nothing. Josh replied that he needed to keep his phone on him. The teacher left the classroom to talk to the office about Josh refusing to surrender his phone. When the teacher came back from the office, the teacher told Josh he needed to leave the class. Josh declined to leave and pulled his phone out to text his lawyer. The teacher stood up and said, "That's why we can't have phones". Josh apologized and explained he was texting his lawyer. The teacher summoned Vice Principal Shreenan, who came to the class and told Josh he had to leave. When Josh declined to leave, she dismissed the class. The students began to leave and Josh grabbed his bag and started walking toward the door. Vice Principal Shreenan told Josh not to leave. Josh explained that he was going with the rest of the class because class had been dismissed. Vice Principal Shreenan called the students back. Josh told Vice Principal Shreenan if she wished to speak to him in the office, that was fine but he needed to have his lawyer on the phone.
52. Josh walked from auto class to the office and entered Principal Lennox's office, after which Principal Lennox stood in front of the exit. Principal Lennox coyly stated there were some people on the way to see Josh. Josh asked who was coming. Principal Lennox did not answer the question but asked what Josh was doing at the school. Josh replied he was attending class. Principal Lennox stated that Josh does not actually have any classes anymore. Josh did not (and does not) know what Principal Lennox meant by that statement. Principal Lennox asked Josh who was outside waiting for him. Josh replied that Principal Lennox had told him there were some people coming to see him.
53. Eventually two police officers pulled up to the school and got out of their cruiser. The officers entered the office, introduced themselves, and told Josh he needed to leave because he had a trespass notice. Josh replied that the trespass notice had expired on January 31, 2023 and all that was in place was an exclusion order which he considered to be unlawful and the obedience of which would involve him condoning an act of discrimination. The police arrested Josh and read him his rights. Two of Josh's friends who were waiting for him

in the parking lot were told they were trespassing and to leave. While he was outside the School near the police cruiser, Josh told them they could go. They remained. The police put Josh in the cruiser and contacted Josh's brother to arrange to hand him off at a nearby location. Josh's brother and three friends picked Josh up from the police not far from the school.

54. Josh has not been permitted to return to school and his appeals have not yet been heard because the School Board has taken the position Josh has not withdrawn from parental control and therefore does not have standing to bring the appeals.

## **JOSH ALEXANDER'S SINCERE CREED BELIEFS**

### **Relevant Foundational Beliefs**

#### ***Josh's Beliefs About God and the Bible***

55. Josh is a Christian: a disciple of Jesus Christ. He believes in the triune God, that is, God in three persons: the Father, the Son (Jesus Christ) and the Holy Spirit (Matthew 28:19; 1:23; Luke 1:35; John 10:30; 1:14; Isaiah 44:6; Colossians 2:9; II Corinthians 13:14; 3:17; I Corinthians 8:6).
56. Josh believes the Holy Bible is the inerrant word of God and authoritatively instructs him regarding his beliefs and his conduct: Psalm 19:7-11; "All Scripture *is* given by inspiration of God, and *is* profitable for doctrine, for reproof, for correction, for instruction in righteousness" (II Timothy 3:16); "Scripture cannot be broken" (John 10:35); "Your word is a lamp for my feet, a light on my path" (Psalm 119:105); "The grass withers, the flower fades, but the word of our God will stand forever" (Isaiah 40:8).

#### ***Josh's Beliefs About Truth, Which Underlie His Beliefs About Gender and Sexuality***

57. Josh believes the triune God, as the Creator, is the source of all truth: "Jesus answered, 'I am the way and the truth and the life'" (John 14:6); "If you hold to my teaching, you are really my disciples. Then you will know the truth" (John 8:31-32); "Whoever hears my word and believes him who sent me has eternal life" (John 5:24); "Through him all things were made; without him nothing was made that has been made. In him was life, and that life was the light of all mankind... We have seen his glory, the glory of the one and only Son, who came

from the Father, full of grace and truth” (John 1:3-4 and 14); “But when he, the Spirit of truth, comes, he will guide you into all the truth” (John 16:13).

58. As a Christian, Josh both deeply desires and believes he is compelled to actively tell the truth, both in word and deed. Josh believes he must, and he gladly does to the best of his ability, tell the truth and refuse to lie when required to give or is offering to give testimony: Exodus 20:16; Psalm 15: 1-3; Proverbs 12:19; Proverbs 14:25. Josh must love the truth and not love deceit and falsehood (see Psalm 52:2-4, for example).
59. For Josh, telling the truth and living according to Biblical truth also requires him to not hide, hold back, or delay to proclaim truth: “No one lights a lamp and hides it in a clay jar or puts it under a bed. Instead, they put it on a stand, so that those who come in can see the light” (Luke 8:16); “Go and make disciples of all nations...teaching them to obey everything I have commanded you” (Matthew 28:19-20). He therefore believes he must not be silent in the face of falsehoods and deceit, which would amount to being complicit in the propagation of untruths. Josh is committed to “denying ungodliness and worldly lusts”, and “living soberly, righteously, and godly in the present age” (Titus 2:12) and will not risk, through silence in the face of falsehoods, denying Christ, his Lord and Saviour (Matthew 10:33). Josh understands his commitment to Biblical truth is unpopular, as are his actions in speaking what he believes the truth is (Amos 5:10).
60. As a Christian, Josh believes he is responsible to “[a]bstain from every form of evil” (I Thessalonians 5:22). Evil includes deception, which has its source in Satan, who “does not stand in the truth, because there is no truth in him. When he speaks a lie, he speaks from his own *resources*, for he is a liar and the father of it” (John 8:44). To in any way endorse or affirm what Josh knows to be evil is sin (James 4:17); it is “exchanging the truth of God for the lie, and...serv[ing] the creature rather than the Creator” (Romans 1:25). This is an act of idolatry, which is forbidden: “You shall have no other gods before Me” (Exodus 20:3).

### ***Josh’s Active Obedience to God over Men As an Expression of His Love for God***

61. Josh has deliberately chosen to surrender his life to Jesus. He acknowledges that he has been bought at a price (the blood of Jesus), joyfully lives as a servant of Christ and not a servant of any man, and denies himself to take up his cross and follow Christ (I Corinthians 7:23; Luke 9:23). He loves God and to love God is to obey God through word and deed (John

14:15; I Samuel 15:22); “‘You shall love the Lord your God with all your heart, with all your soul, and with all your mind.’ This is *the* first and greatest commandment” (Matthew 22:37-38).

62. Josh believes that loving God above all else requires obeying him even when doing so means disobeying earthly authorities when they act contrary to Scripture. Sometimes human authorities demand certain acts be done or certain things be said that involve injustice, idolatry, and sin, but Josh believes that, as a Christian, he is called to resist such demands and trust in the Lord: “We must obey God rather than human beings!” (Acts 5:29 – spoken by the Apostle Peter); Galatians 1:10; Exodus 1:18-20; Daniel 3:12-18 and 4:10 (Shadrach, Meshach, Abednego, and Daniel). Josh believes he is commanded by the Bible to fear God, not other people (Matthew 10:28, 32-33; Galatians 1:10; Proverbs 1:7, 29:25).
63. Further, Josh believes that “to him who knows to do good and does not do *it*, to him it is sin” (James 4:17). Josh strives to “walk worthy of the calling with which [he is] called” (Ephesians 4:1) because he will one day appear before God to be judged in accordance with what he has done (II Corinthians 5:10). Josh further believes he must “not be conformed to this world, but be transformed by the renewing of your mind, that you may prove what *is* that good and acceptable and perfect will of God” (Romans 12:2). For Josh, living according to truth, loving God, and obeying God, who is love as well as truth (I John 4:8) are interconnected: “Love does not delight in evil but rejoices with the truth” (I Corinthians 13:6).

### **Human Sexuality and Gender Beliefs**

64. The Bible informs and is determinative of Josh’s beliefs regarding human sexuality and gender. Josh believes human beings are created in the image of God: “Then God said, ‘Let Us make man in Our image, according to Our likeness’...So God created man in His *own* image; in the image of God He created him; male and female He created them” (Genesis 1:26-27). To bear God’s image is to exist in a special relationship with God and to contribute to God’s revelation on earth, and is to possess inherent God-given dignity. As beings intentionally created to bear the image of God, humans are more than their anatomy, but not less. Bodies matter because bodies reflect the intention of the Creator and He calls his followers to honour Him with their bodies (Romans 12:1; I Corinthians 6:20).

65. Josh believes God has the right to speak because he is the Creator and human beings are the creatures. God has infinite knowledge of his creation and God speaks to how and why he made it. Human beings accordingly do not possess the authority to rewrite the blueprint of their design: “The earth *is* the LORD’s, and all its fullness, The world and those who dwell therein. For He has founded it upon the seas, And established it upon the waters” (Psalm 24:1-2). God knows every human being in his creation even prior to birth:

For You formed my inward parts; You covered me in my mother’s womb. I will praise You, for I am fearfully *and* wonderfully made; Marvelous are Your works, And *that* my soul knows very well. My frame was not hidden from You, When I was made in secret, *And* skillfully wrought in the lowest parts of the earth. Your eyes saw my substance, being yet unformed. And in Your book they all were written, The days fashioned for me, When *as yet there were* none of them (Psalm 139:13-16).

66. Josh believes that to reject the created design of human nature and human bodies is to reject Christ the Creator (John 1:3), who quoted and affirmed the Genesis account: “And He answered and said to them, “Have you not read that He who made *them* at the beginning ‘made them male and female,’ and said, ‘For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh’? So then, they are no longer two but one flesh. Therefore what God has joined together, let not man separate” (Matthew 19:4-6). Josh believes human beings ought not seek to undo what God has done: “It is He who has made us, and not we ourselves” (Psalm 100:3). Human completeness comes about through the joining of male and female, not the futile attempt to morph one into the other.

67. Josh believes human beings are created to fulfil a godly purpose: “Then God blessed them, and God said to them, ‘Be fruitful and multiply; fill the earth and subdue it’” (Genesis 1:28); “Therefore a man shall leave his father and mother and be joined to his wife, and they shall become one flesh” (Genesis 2:24). When God declared that his creation was good (Genesis 1:31), he was declaring that his creation was intentional and had a purpose behind it. Biblical Christianity does not sever gender from sex because the unique ways God made humans are tied to their intended roles and purposes, physically, sexually, and relationally.

68. God created men and women ontologically different, with equal dignity before God. Each, though distinct, complements the other: “And the LORD God caused a deep sleep to fall on Adam, and he slept; and He took one of his ribs, and closed up the flesh in its place. Then

the rib which the LORD God had taken from man He made into a woman, and He brought her to the man” (Genesis 2:21-22); “[Man] is image and glory of God; but woman is the glory of man. For man did not come from woman, but woman from man; neither was man created for woman, but woman for man...in the Lord woman is not independent of man, nor is man independent of woman. For as woman came from man, so also man is born of woman. But everything comes from God” (I Corinthians 11:7-12).

69. God laid out his perfect plan for all of creation, including human creation. That which contravenes God’s commandments is deception masquerading as pleasure and enlightenment: “For God knows that in the day you eat of it your eyes will be opened, and you will be like God, knowing good and evil” (Genesis 3:5). Josh believes gender identity apart from the gender God has created and ascribed to humans, and revealed through the unique way he has formed his creation, is a rejection of God’s lordship, as is the message that human beings cannot trust God, but should trust themselves. Humans are to trust God and not themselves: “Trust in the LORD with all your heart, And lean not on your own understanding; In all your ways acknowledge Him, And He shall direct your paths” (Proverbs 3:5-6).
70. The rejection of God’s perfect plan for his creation leads to knowledge which takes the form of shame, not enlightenment: “Then the eyes of both of them were opened, and they knew that they *were* naked; and they sewed fig leaves together and made themselves coverings” (Genesis 3:7). Trusting self over God is not reliable: “The heart *is* deceitful above all *things*, And desperately wicked; Who can know it?” (Jeremiah 17:9). Rather, human beings are to abstain from the passions of the flesh, which ultimately lead to desolation: “Beloved, I beg *you* as sojourners and pilgrims, abstain from fleshly lusts which war against the soul” (I Peter 2:11).
71. As discussed above regarding Josh’s beliefs concerning truth, Josh believes the Bible compels him to reject complicity in the deception and coercion surrounding conceptions of gender that are contrary to and in opposition to the truths in the Bible. As a Christian, Josh believes he is not only required to tell the truth and resist the temptation to lie; he is also responsible to love others (John 13:34; Matthew 22:39). Affirming others in the deception which enslaves them in spiritual, emotional, and intellectual bondage is not an act of love; telling them the truth in love is what is required of him: “that we should no longer be

children, tossed to and fro and carried about with every wind of doctrine, by the trickery of men, in the cunning craftiness of deceitful plotting, but, speaking the truth in love, may grow up in all things into Him” (Ephesians 4:14-15). True freedom is only found in the truth that comes from Christ: “the truth will set you free” (John 8:31-32).

72. As a Christian, Josh believes he is commanded to do what he can to ensure a weaker brother or sister does not stumble in his or her faith (Romans 14:21; I Corinthians 8:13). Not only does stumbling *himself* attract guilt (James 4:17); the word of God reveals that complicity in causing someone else to stumble is far worse: “But whoever causes one of these little ones who believe in Me to stumble, it would be better for him if a millstone were hung around his neck, and he were thrown into the sea” (Mark 9:42). Josh believes he must not call good evil and evil good (Isaiah 5:20), and that he is called by God, as are all children of God, to proclaim that God’s design of and roles for the male gender and the female gender are good and that man’s attempt to subvert those designs and roles is evil.
  
73. In summary, as part of his creed, Josh believes the following, which appear in the Nashville Statement:
  - a. Josh affirms that divinely ordained differences between male and female reflect God’s original creation design and are meant for human good and human flourishing;
  - b. He affirms that the differences between male and female reproductive structures are integral to God’s design for self-conception as male or female;
  - c. He denies that physical anomalies or psychological conditions nullify the God-appointed link between biological sex and self-conception as male or female;
  - d. He affirms that self-conception as male or female should be defined by God’s holy purposes in creation and redemption as revealed in Scripture;
  - e. He denies that adopting a transgender self-conception is consistent with God’s holy purposes in creation and redemption;
  - f. He affirms that it is sinful to approve of transgenderism and that such approval constitutes an essential departure from Christian faithfulness and witness;

- g. He denies that the approval of transgenderism is a matter of moral indifference about which otherwise faithful Christians should agree to disagree;
- h. He affirms his duty as a Christian to speak the truth in love at all times, including when we speak to or about one another as male or female;
- i. He denies any obligation to speak in such ways that dishonor God's design of his image-bearers as male and female;
- j. He affirms that the grace of God in Christ enables sinners to forsake transgender self-conceptions and by divine forbearance to accept the God-ordained link between one's biological sex and one's self-conception as male or female; and
- k. He denies that the grace of God in Christ sanctions self-conceptions that are at odds with God's revealed will.

#### **Josh's Beliefs Regarding Sex-Segregated Spaces and Modesty**

- 74. Men are created to be protectors of women. The first protector was the first man of creation, Adam, who was placed in charge of the Garden of Eden (Genesis 2:15). Adam's wife became vulnerable to the serpent only when he was not modelling the role of protector, that is, protecting her. The predator approached the woman, not the man (Genesis 3:1, 4). When God learned of the breach of his law, he confronted not Eve, but Adam (Genesis 3:9), for Adam is the one who abdicated his responsibility to protect his home and his wife.
- 75. Christ, the "last Adam" (I Corinthians 15:45), modelled the protection of women during his earthly ministry; one woman Christ protected from death by stoning (John 8:1-12); one he protected from unjust criticism (Luke 10:38-41); and even in the midst of his excruciating death, Christ made provision for the protection of his mother (John 19:26-27).
- 76. The word of God instructs men to protect not only their wives, going as far as laying down their lives (Ephesians 5:25, 28), but also other men's widows (I Timothy 5:3; James 1:27). Men are obligated to "exhort...older women as mothers, younger women as sisters, with all purity" (I Timothy 5:1-2).
- 77. God's design of men as protectors of women is also revealed in the physical strength disparities between male and female (Proverbs 20:29; I Peter 3:7) and in the punishment to

be exacted against a disobedient nation, that is, the removal of protective men, rendering the nation cursed and vulnerable (Isaiah 3:1-3). Further, in the metaphor often used to describe that which is the object of God's protection—"the Bride"—God's conception of male as protector and female as protected comes into sharp relief. As a young Christian man, Josh believes he is called to protect women who are placed in a vulnerable position, despite his youth: "Let no one despise your youth, but be an example to the believers in word, in conduct, in love, in spirit, in faith, in purity" (I Timothy 4:12).

78. Sex-segregated spaces are meant to protect women's bodies and women's modesty. To preserve the integrity of women's sex-segregated spaces is to protect women, which God calls Josh to do. Josh believes he is accordingly compelled to speak up for vulnerable young women, particularly the ones who are asking for his help. Young women who believe as Josh does are placed in positions that may expose them to sin or shame if they are compelled to share spaces such as washrooms and change rooms with biological men. In speaking for the girls around him who feel unheard, or are too afraid to speak for themselves because of the negative social consequences, Josh is putting into action Proverbs 31:8: "Open your mouth for the mute".

## **Conclusion**

79. Josh believes his faith requires him to reject any affirmation which in any way contributes to the destruction of himself or any other human being; to actively speak truth and reject all falsehoods; and to protect vulnerable women with whom he comes into contact.
80. Josh believes in telling the truth about the reality there are only two genders (male and female, as created by God). He believes that, out of love for God's truth and love for people, he must openly oppose the idolatrous falsehood that humans can supplant God's design and rule by changing from one gender to another, or change into a human-invented, unreal gender. Josh believes God's design for gender is good; man's perversion of it is evil. Josh believes that, for him, it is sinful to speak falsehoods about gender when required to do so by human authorities or to remain silent when such falsehoods are being communicated by or to those around him.

## LAW

### Legislation

81. The Ontario *Human Rights Code* (the *Code*), which has primacy over all other provincial laws in Ontario, states in its first section: “Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because 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”.<sup>1</sup>
82. Discrimination will be established where a person shows he possesses a *Code*-protected characteristic; he has experienced negative treatment or an adverse impact in a *Code*-governed area; and the protected characteristic was a factor in the negative treatment or adverse impact. No intention to discriminate is necessary; acts or omissions which discriminate in effect are equally prohibited. Protection against discrimination applies in the area of services, including education.

### Ontario Human Rights Commission Policy

83. Under the *Code*, discrimination because of religion or creed is unlawful. Since the *Code* does not define creed, the “Policy on preventing discrimination based on creed” (“Creed Policy”) of the Ontario Human Rights Commission (the “Commission”) is a useful tool for interpreting and clarifying the law in this area. While courts and tribunals have often referred to religious beliefs and practices, creed may also include non-religious belief systems which substantially influence a person’s identity, worldview, and way of life.<sup>2</sup>
84. Although historically Christian minorities in Ontario often faced more intense creed-based prejudice and discrimination,<sup>3</sup> new forms of prejudice against religious people *in general* have recently emerged owing to an increasingly secular culture.<sup>4</sup>
85. People experience discrimination based on creed in many different ways and the Commission identifies “faithism” as one of the most common and problematic because it

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<sup>1</sup> [RSO 1990, c H.19](#).

<sup>2</sup> [At section 4, note 72](#).

<sup>3</sup> [At section 3.1](#).

<sup>4</sup> [At section 3.2](#) [emphasis added].

ascribes negative characteristics to people of faith based on their beliefs,<sup>5</sup> for example, backwardness, irrationality, misogyny, homophobia, and subversion.<sup>6</sup>

86. Faithism can be individual, institutional, or both.<sup>7</sup> Individual faithism involves the denigration of religious people who follow beliefs and ways of life that differ from what may be considered “normal” or “acceptable”.<sup>8</sup> While critically engaging with or negatively evaluating a person’s belief is not “faithist” in and of itself, a distortion of the belief which tends to stereotype the individual holding it is discriminatory.<sup>9</sup>
87. Systemic faithism may appear neutral on its surface, but has an “adverse effect” or exclusionary impact on people belonging to particular communities of belief. For example, a policy of inclusion for some may tend to incidentally exclude others.<sup>10</sup> The Commission has found if a creed belief differs from mainstream ways of life, it is more likely to be stigmatized and considered unworthy of accommodation.<sup>11</sup>
88. Faithism can also lead to creed harassment,<sup>12</sup> when acted upon or communicated in, for example, the education context.
89. The stated objective of the Commission’s Creed Policy, “[i]n keeping with the Preamble to the *Code*” is to “provide equal rights and opportunities without discrimination and harassment because of creed” and “promote recognition of the inherent dignity and worth of people of diverse creed faiths, *whatever their creed* and create a climate of understanding and mutual respect, so that people of diverse creed faith *feel they belong* in the community and can *fully contribute* to it”.<sup>13</sup>

### ***Limitation on Creed Rights***

90. While the Creed Policy states “Human rights protections for creed do not extend to practices and observances that are hateful or incite hatred or violence against other individuals or

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> [At section 2](#) [emphasis added].

groups, or contravene criminal law”, it is equally clear on what that would mean: “[t]he use of religious claims to justify curtailing and violating people’s rights” such as the criminalization of lifestyles people desire to entertain or practice. The rightful non-interference with what people choose to do or how they choose to live is not an invitation to invent harm nowhere identified or materialized out of antipathy for another’s religious beliefs about said lifestyles.

91. Indeed, the Ontario Human Rights Commission’s Policy on competing human rights (“Competing Rights Policy”) states “When rights appear to be in conflict, a key consideration is to determine if there is an actual intrusion of one right on the other, and the extent of the interference. If the interference is minor or trivial, the right is not likely to receive much, if any, protection”. The Competing Rights Policy goes on to state decision makers “[m]ust look at [the] extent of [the] interference”; “only *actual* burdens on rights trigger conflicts”; “[u]nless there is a substantial impact on other rights, there is no need to go further in the resolution process”; and “speculation that a rights violation may occur is not enough—there must be evidence, and not just an unsupported assumption, that the enjoyment of one right will have a harmful effect on another”. In other words, the harm to the competing right must be demonstrable, not merely asserted.

### *Further and Enhanced Rights*

92. The OHRC’s Creed Policy is clear that there is no hierarchy of rights: “[T]he Supreme Court of Canada has confirmed that there is no hierarchy of rights, and creed deserves the same consideration, protection and respect as other human rights”.<sup>14</sup>

93. The Commission continues:

It is well-established in law that people protected under the ground of creed are entitled to the same level of protection as people protected under other *Code* grounds. **Arguments that a person can avoid discrimination or intolerance by modifying their behaviours or beliefs and making different choices has been rejected as a justification for discriminatory behaviour.**<sup>15</sup>

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<sup>14</sup> [At section 5.1.](#)

<sup>15</sup> [At section 5, note 98](#) [emphasis added].

94. Additionally, “People who have a creed, or are discriminated against because of their creed or lack thereof, are also covered by the *Code* under section 8 if they experience reprisal or are threatened with reprisal for trying to exercise their human rights”.<sup>16</sup>
95. The Commission continues, in its Creed Policy, “The *Code* includes specific defences and exceptions that allow behaviour that would otherwise be discriminatory” including “solemnization of marriage by religious officials (section 18.1), separate school rights (section 19), restriction of facilities by sex (section 20)”.<sup>17</sup>
96. Also clear is the Commission’s position on the enhancement of creed rights on the basis of *Charter* protections: “[D]epending on the circumstances, the right to equal treatment based on creed may be informed not only by the Section 15 equality provisions of the *Charter* (like other *Code* grounds) but also by a “fundamental freedom” under the Constitution (freedom of conscience and religion under s. 2(a) of the *Charter*)”.<sup>18</sup> In addition, where **expressing** a creed enters as an issue, another *Charter* right is introduced: section 2(b).

### ***The Duty to Accommodate***

97. The duty to accommodate arises where a person holding a sincere religious belief is adversely affected by a requirement, rule or standard implemented by an organization. An appropriate accommodation is one wherein the organization has engaged in a meaningful way and followed a good faith process.<sup>19</sup>
98. Offers of forced segregation of the individual holding the creed belief are not appropriate accommodation and accordingly do not fulfil the duty to accommodate. Appropriate accommodation is accommodation which respects dignity and autonomy while “allow[ing] for **integration** and full **participation**”.<sup>20</sup>
99. Morale, third-party preferences, and inconvenience are insufficient reasons to limit accommodation of an individual’s creed beliefs and practices,<sup>21</sup> and the duty to

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<sup>16</sup> [Ibid.](#)

<sup>17</sup> [Ibid.](#)

<sup>18</sup> [Ibid.](#)

<sup>19</sup> [At section 9.](#)

<sup>20</sup> [At section 9.4](#) [emphasis added].

<sup>21</sup> [At section 9.9.](#)

accommodate is not negated on the basis a belief or practice is unreasonable or objectionable.

100. The Commission’s Creed Policy demands organizations develop “broader strategies to prevent and address discrimination based on creed” including: barrier prevention, review and removal; anti-harassment and anti-discrimination policies; training for dealing with creed diversity; an internal complaints procedure; and an accommodation policy and procedure, for the stated reason that “[a]ll of society benefits when people of diverse creed backgrounds are encouraged and empowered to take part at all levels”.<sup>22</sup>
101. The Creed Policy exhorts, “[H]ow a society treats religious and creed minorities indicates its tolerance towards difference and diversity in general. Freedom and equality rights based on religion and creed are core elements of a free and democratic society”.<sup>23</sup> This includes minority beliefs and the right to “manifest” them,<sup>24</sup> given that “more people of all faiths are understanding and practicing their faith in *individual* ways”—a trend “projected to accelerate in the future” in Ontario and Canada.<sup>25</sup>
102. The *Code* duty to accommodate extends to a wide variety of religious beliefs and practices, absent any test for reasonableness: “For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society”.<sup>26</sup>

## Case Law

103. *Syndicat Northcrest v Amselem*<sup>27</sup> is at once instructive in determining what qualifies as religion or creed and requires accommodation, and explicitly accepted as authoritative by the Commission.<sup>28</sup> All that is necessary to establish an individual’s need for religious accommodation is:

(1) he or she has a practice or belief, having a nexus with religion, which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's

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<sup>22</sup> [At section 12.](#)

<sup>23</sup> [At section 1.](#)

<sup>24</sup> [Ibid.](#)

<sup>25</sup> [At section 1, note 1](#) [emphasis added].

<sup>26</sup> [Trinity Western University v British Columbia College of Teachers, 2001 SCC 31](#) at para. 36.

<sup>27</sup> [2004 SCC 47 \[Amselem\].](#)

<sup>28</sup> [At section 9.5.3.](#)

spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and (2) he or she is sincere in his or her belief.<sup>29</sup>

***Case Law Explicitly Recognized by the Commission***

104. The Commission states in its Creed Policy, “Canada’s highest Court has repeatedly affirmed the key place of religious freedom and equality rights based on creed at the centre of Canada’s liberal democratic legal tradition”.<sup>30</sup>

105. The Commission continues, invoking<sup>31</sup> *Loyola High School v Quebec (Attorney General)*<sup>32</sup> for these propositions: “A pluralist, multicultural democracy depends on the capacity of its citizens ‘to engage in thoughtful and inclusive forms of deliberation amidst, and enriched by,’ different religious worldviews and practices”,<sup>33</sup> and “[A] multicultural multireligious society can only work...if people of *all* groups understand and *tolerate* each other”.<sup>34</sup>

106. In its Creed Policy, the Commission also quotes with approval<sup>35</sup> part of one of the Supreme Court of Canada’s most famous passages regarding freedom:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct...If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free...What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of “the tyranny of the majority”.<sup>36</sup>

107. The Commission further quoted the Supreme Court of Canada,<sup>37</sup> which itself quotes approvingly the European Court of Human Rights decision in *Kokkinakis v Greece*:<sup>38</sup>

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<sup>29</sup> [Supra note 27](#) at para. 56.

<sup>30</sup> [At section 1, note 5.](#)

<sup>31</sup> [Creed Policy at section 1, notes 8, 9.](#)

<sup>32</sup> [2015 SCC 12 \[Loyola\].](#)

<sup>33</sup> [Ibid.](#) at para. 48.

<sup>34</sup> [Supra note 32](#) at para. 47 [emphasis added].

<sup>35</sup> [At section 1, notes 5, 10.](#)

<sup>36</sup> [R. v Big M Drug Mart, \[1985\] 1 SCR 295](#) at paras. 94-6.

<sup>37</sup> [At section 1, note 8.](#)

<sup>38</sup> Judgment of 25 May 1993, Series A No. 260-A [*Kokkinakis*].

Freedom of thought, conscience and religion...is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it” [p. 17].<sup>39</sup>

108. The Commission’s choice to include in its policy<sup>40</sup> the following statement from the Supreme Court of Canada demonstrates its understanding that *the goal is tolerance, not agreement*:

When we ask people to be tolerant of others, **we do not ask them to abandon their personal convictions**. We merely ask them to respect the rights, values and ways of being of those who may not share those convictions. The belief that others are entitled to equal respect depends, not on the belief that their values are right, but on the belief that they have a claim to equal respect regardless of whether they are right.<sup>41</sup>

109. The Commission’s Creed Policy reflects a deep and thorough understanding of the jurisprudence supporting the idea that tolerance of differing views, regardless of how uncomfortable, is the price to pay for a functioning democracy and the institutions which must function within it.

## ARGUMENT

### Discrimination

110. The Applicant has faced both discrimination and harassment by the Respondent, based on his creed, within the meaning of the *Code*. The Commission’s findings as published in its “Policy on preventing discrimination based on creed” align closely with the Applicant’s experience of discrimination at his school.
111. The Applicant exists in an increasingly secular culture where new forms of prejudice against religious people have taken hold, as the Commission’s research has found. Even in the vast

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<sup>39</sup> [Supra note 32](#) at para. 45.

<sup>40</sup> [Creed Policy at section 9.11.5](#).

<sup>41</sup> [Chamberlain v Surrey School District No. 36, 2002 SCC 86](#) at para. 66 [emphasis added].

majority of Christian circles, the Applicant's overt commitment to Biblical sexuality sets him apart. The Applicant is in this respect a Christian minority.

112. The Applicant has suffered denigration because he follow[s] beliefs and ways of life that differ from what is considered "normal" or "acceptable". The Respondent went well beyond "critically engaging with or negatively evaluating" the Applicant's beliefs, to distorting his beliefs, stereotyping him, attempting to segregate him, and, most concerning, severely punishing him.
113. The faithism apparent in the handling of the Applicant's expression of his religious beliefs quite literally had an exclusionary impact on him: he was suspended from school, excluded from attending classes in person, and most recently, excluded altogether from attending school in person for the remainder of the 2022-2023 school year. The Applicant's creed belief differs from mainstream ways of life, and he was, as the Commission's research has found, stigmatized and considered unworthy of tolerance, inclusion, and participation.

### **Creed Harassment**

114. The faithism suffered by the Applicant also led to creed harassment, when it was acted upon by at least two of the Applicant's teachers, one of whom publicly called him "misogynist" and suggested he only holds the beliefs he holds because he was unable to control himself sexually; and one who encouraged the Applicant's peers who were shouting him down as a "misogynist", a "racist" and a "homophobic transphobe". Couching the Applicant's religious beliefs in the language of hate and predation displays the very faithism characterized as discrimination in the Commission's Creed Policy.

### **Limitation Does Not Apply**

115. The Respondent has ascribed negative characteristics to the Applicant based on his religious beliefs about human sexuality and gender, assuming the Applicant has harmed or will harm other students based on nothing other than the expression of his religious beliefs. The Applicant's religious beliefs do not involve hating or harming anyone, however. The Applicant's expression of his Biblical view of human sexuality and gender does not rise to the level of hate speech, incitement to violence or endangerment of others. To assert they do is hyperbolic nonsense and implies Biblical Christianity is somehow illegal. Further, no

evidence of any tangible harm as contemplated in the relevant jurisprudence<sup>42</sup> exists in this case, rather only unsupported assumptions about “safety”. No one has been objectively harmed by the Applicant’s beliefs. Any subjective emotional upset, while not to be ignored, must be acknowledged as the unavoidable incidental outcome of prioritizing tolerance, protecting religious pluralism, and promoting the equality of free expression.

### **Application of Further and Enhanced Rights**

116. The Applicant has experienced reprisal and threat of reprisal for trying to exercise his human rights based on creed under the *Code*; he accordingly attracts the protection of section 8 of the *Code*. It was not until after the Applicant advised the School Board, through counsel, that he intended to resist the School Board’s discrimination on protected *Code* grounds that he was excluded, issued a trespass notice, banned for the remainder of the school year, and arrested.
117. While the Respondent states in its open letter discussing the events surrounding the Applicant’s arrest that it “draws on guidance from the policies issued by the Ontario Human Rights Commission”,<sup>43</sup> the School Board appears to rely exclusively on just one of the Commission’s policies—the “Policy on preventing discrimination because of gender identity and gender expression” (“Gender Identity Policy”)<sup>44</sup>—even quoting from that policy’s comment on washrooms and change rooms.
118. In its public communications regarding the Applicant, the School Board fails to mention the Commission’s Creed Policy, or acknowledge the fact it is a *Catholic* School Board and will therefore attract a disproportionate number of religious students, some of whom will inevitably hold Bible-based beliefs. The School Board appears to have failed to consider how its washroom policy might affect such students with religious beliefs about gender, sexuality and modesty.
119. Nor does the Commission’s Gender Identity Policy itself ever explicitly address how it might interact with creed or the Commission’s Creed Policy. Indeed, the Gender Identity Policy frames discrimination against transgender people as a **societal** problem born of

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<sup>42</sup> [Multani v Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6](#) at para. 67.

<sup>43</sup> <https://rccdsb.ca/announcement-posts/an-open-letter-to-the-rccdsb-community/>.

<sup>44</sup> [At sections 1, 4, 4.1, 4.2, 4.3.](#)

deeply rooted myths and fears in **society**, **social** norms, **society's** bias, **stereotypical** norms, lack of awareness and understanding, a binary **Western** way of thinking, confusion, bias, prejudice, simple ignorance, misunderstanding, bigotry, negative attitudes, unfounded generalizations, misconceptions, incomplete or false information, aversion and hatred—but never once points a finger at religious belief, even though significant numbers of adherents to Abrahamic faiths (Judaism, Christianity, Islam) would see, for example, the advent of biological males in private female spaces as a violation of religious beliefs and religious norms of behaviour.

120. The implication is that the Commission has at least tacitly, out of necessity and in keeping with the *Code* and the *Charter*, carved out a space for the **fundamental** freedom of religion that, while not necessarily superior, is almost certainly unique. After all, the Commission is aware that forbidding a person of faith from manifesting his or her religious beliefs, even if such religious beliefs are considered offensive to some, would violate not only the *Code* but also two intersecting fundamental *Charter* freedoms: religion and expression.<sup>45</sup>

121. A 2012 HRTO decision indirectly telegraphs the potential conflict between the two Commission policies, stating:

This is not meant to suggest that in any circumstance and upon request, a transgendered person must necessarily be treated in exactly the same manner as others with their lived gender. The issues involved in addressing transitions in the workplace may be complex, in particular regarding the use of washrooms or locker rooms. Society typically divides facilities based on sex, and separate use of such facilities is linked with notions of **privacy, identity, public decency and sexuality**.<sup>46</sup>

122. While the Applicant does not bring a claim of discrimination on the basis of the School Board's washroom policy *per se*, the washroom policy was at the heart both of the discussions wherein he was met with creed discrimination, and the reason he was segregated, suspended, excluded, and arrested. Non-discrimination and tolerance require permitting the Applicant to express his opposition to the washroom policy when that expression is a manifestation of his creed. Regardless of whether it may be condoned by a majority, or by social elites, or even requested by another protected minority, the *Code*

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<sup>45</sup> [Creed Policy at section 5.1.](#)

<sup>46</sup> [Vanderputten v Seydaco Packaging Corp, 2012 HRTO 1977](#) at para. 68 [emphasis added].

prohibits the School Board from penalizing a student who, like the Applicant, expresses minority creed beliefs regarding gender and sexuality, including beliefs that people cannot actually change their gender or sex and that people should not be compelled to share sex-segregated spaces with people of the opposite sex.

### **Failure to Accommodate**

123. The School Board first failed to accommodate the Applicant's creed beliefs by refusing to meaningfully engage with the protected ground the Applicant claimed, despite numerous attempts by the Applicant's counsel to bring the discrimination to the School Board's attention. The School Board ignored the concerns of discrimination raised. After a series of suspensions and exclusions, the School Board permanently excluded the Applicant from school.
124. The School Board further failed to provide a meaningful accommodation respectful of the dignity and autonomy owed to the Applicant while ensuring integration and full participation in his classes and school life. The School Board failed to consider that its duty to provide reasonable accommodation is not negated by whether others consider his beliefs objectionable, offensive, unreasonable, inaccurate, or part of some "-ism".

### **Systemic Failure to Prevent Discrimination and Failure to Accommodate**

125. The School Board failed to develop authentically inclusive policies aimed at handling conflict in constructive ways by preparing for a wide variety of beliefs held by people of diverse creed backgrounds. The School Board's myopic policies intended to prevent bullying facilitated bullying of the Applicant by casting him as the "other", rather than dealing with creed diversity in a productive manner by removing barriers and implementing broad anti-harassment and anti-discrimination policies; training in creed diversity; and genuine accommodation policies and procedures.
126. The School Board's lack of preparedness to accommodate a situation exactly like this is particularly egregious, given that the school is Catholic and would be expected to attract at least some Bible-following students.
127. That a Catholic school board purporting to base its system of beliefs on the Bible has failed to anticipate and build-in accommodation for a person who believes what the Bible plainly

states compounds the error. By failing to inclusively design its policies to accommodate the Biblical tenets it purports to uphold, the School Board has tacitly condoned the creed harassment levelled by the Applicant's teachers, who publicly harassed and humiliated him. By refusing even at last correspondence to rectify the discrimination being experienced by the Applicant, the School Board reveals itself as a bad faith actor.

128. In a culture rife with sexual and gender exploration, a young man of sixteen whose religious beliefs compel sexual purity is no less than a religious minority. As one might expect, such beliefs are accompanied by a rigid religious conception of what constitutes appropriate human sexuality. These beliefs are neither "hateful" nor "harmful" to anyone. Tolerating the Applicant's expression of his religious beliefs by declining to discriminate against the Applicant for such expression will not result in anyone being prevented from doing or believing whatever they wish regarding their own gender and sexuality. For example, declining to penalize the Applicant for expressing his opposition to the School Board's washroom policy in no way requires or involves changing the washroom policy to what the Applicant believes it ought to be.
129. The law does not sanction reliance on some abstract notion of imagined or potential "harm" as a means to justify discrimination against religious students: "[T]he existence of concerns relating to safety must be unequivocally established for the infringement of a constitutional right to be justified".<sup>47</sup> Even the Commission contemplates something a world apart from a student expressing his Bible-based religious beliefs, using as its example of an intolerable "creed" a "white supremacist school club".<sup>48</sup>
130. It is the height of discrimination to compel the Applicant, in opposition to his religious beliefs, to pretend to believe something he does not believe on pain of exclusion. The Commission's own policy is clear the School Board is required to accommodate the Applicant in a way that integrates rather than segregates. An appropriate accommodation for the Applicant is one that allows for his meaningful (i.e. in-person) participation in his classes and school life. Rather than designing its policies to include and tolerate everyone, as distinct from demanding a monolith of belief, the School Board has determined to simply

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<sup>47</sup> [Supra note 42](#) at para. 67.

<sup>48</sup> [Creed Policy at section 4.2.](#)

exclude a religious minority student like the Applicant under the guise of some undisclosed and unqualified “harm”. This is unlawful discrimination.

## **REMEDY**

131. The Applicant seeks the following relief:

- a) A declaration that the Respondents’ harassment, segregation, penalization, and exclusion of the Applicant constitutes unlawful creed discrimination;
- b) A declaration that the Respondent School Board contravened section 8 of the *Code* by taking retaliatory action against the Applicant when he attempted to exercise his human right to express his religious beliefs without discrimination;
- c) An order directing the Respondent School Board remove any record of discipline assigned to the Applicant regarding the events described herein;
- d) An order directing the Respondent School Board develop and implement policies that protect the expression of minority religious beliefs regarding gender and sexuality, including beliefs based on the Bible;
- e) General damages for injury to dignity in the amount of \$40,000; and
- f) Special damages as a result of the Applicant’s loss of education, and loss of opportunity arising therefrom, all of which are to be proven at the hearing of this Application.

**Josh Alexander**

**April 5, 2023**