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February 6, 2012

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Rob Wynen  
Trustee, Vancouver Board of Education  
1580 West Broadway  
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**Re: Cease and Desist**

I act for Dr. Ken Denike, a director of the B.C. Public School Employers' Association (the "BCPSEA") and trustee on the board of education (the "Board") for School District 39 (the "District"), and for Sophia Woo, also a Board trustee.

In recent weeks you have made a series of statements about my clients to the effect that, *inter alia*, my clients:

- a) oppose the Board's anti-discrimination policies;
- b) have engaged in "fanning homophobic fear";
- c) have engaged in "stoking fear and promoting hate";

- d) oppose policies designed to provide a safe and inclusive environment in the District's school communities; and
- e) have misrepresented the Board's non-discrimination policies to members of the public.

Such statements (the "Defamatory Statements") include statements made to and reported by members of the local media, statements broadcast on local media, statements made on social media (including Twitter), statements made at a Board meeting on January 16, 2012 (in connection with a Board resolution that was *ultra vires* the Board's powers and which violated principles of natural justice), and statements made in correspondence dated January 25, 2012 to Chris Harris and Debbie Pawluk, Presidents of the Vancouver Teachers' Federation, amongst others.

The Defamatory Statements are false and misleading.

The Defamatory Statements have included references to two videos. Neither video provides any justification for the Defamatory Statements made.

The first such video is video formerly on the website of the 'Marriage Anti-Defamation Alliance' ("MADA"), an initiative of the National Organization for Marriage (the "Unauthorized Video"). My clients understand that you have received a copy of correspondence to the President of the National Organization for Marriage dated January 10, 2012 that sets forth in detail the context in which that video was produced. For convenience of reference, a copy of that correspondence is enclosed. The Unauthorized Video was removed from MADA's website within 48 hours of receipt of my clients' demand.

The second such video is a video depicting part of a private event attended largely by residents of municipalities outside of Vancouver (the "Picnic Video"). The purpose of the event, which lasted nearly four hours, was to engage citizens about municipal election issues to encourage greater participation and interest. The topics covered at the event were wide-ranging. One such topic discussed at that event related to existing and prospective Board policies.

A substantial number of the Defamatory Statements refer to the Picnic Video as a putative basis for the allegation that my clients have misrepresented the District's anti-discrimination policies to District parents.

That allegation is false. My clients strongly deny having made any misrepresentations concerning the Board's anti-discrimination policies.

As you may be aware, in 1992 the Board adopted a non-discrimination policy based upon several earlier Board actions and then-current practice. According to that policy, as revised on several occasions in the late 1990s, a policy of non-discrimination and

equitable treatment for all individuals regardless of race, colour, ancestry, ethnic origin, religion, socio-economic status, gender, sexual orientation, physical or mental ability, or political beliefs was mandated in all matters of instruction and course selection. This 1992 policy followed upon an earlier Non-Discrimination policy adopted in 1975 (and still in effect, as revised) for the elimination of discriminatory practices in the District school system. In 1995, the Board adopted a further Multiculturalism and Anti-racism policy and, in 2004, a policy to establish and maintain a safe and positive learning environment for all students who identify as lesbian, gay, bisexual, transgender, transsexual, two-spirit, or questioning (all such aforementioned policies, the “Anti-Discrimination Policies”).

My clients have always been supporters of the Anti-Discrimination Policies, the values they give voice to, and the protections they afford to members of the District’s school communities. None of the Anti-Discrimination Policies are criticized in the Picnic Video.

The dialogue documented in the Picnic Video related to concerns that had been expressed by parents at the event about a prospective policy that was the subject of some controversy within the Burnaby School District several months earlier. That prospective policy was perceived as going beyond the extant Anti-Discrimination Policies which already apply across the District on a mandatory or compulsory basis.

The Ministry of Education has recognized that the family is the primary educator in the development of students’ attitudes and values, with the school playing a supportive role by focusing on prescribed learning outcomes. Ministerial policy specifically confers upon parents and guardians the choice of arranging for alternative delivery of instruction in connection with specific parts of the prescribed curriculum that some students, parents or guardians may feel more comfortable addressing by means other than instruction by a teacher in a regular classroom setting (the “Ministerial Policy”).

The dialogue with participants at the event partially depicted on the Picnic Video related to social issues in general and to citizens’ involvement and participation in municipal elections. A component of that dialogue involved a discussion of how District policy may best provide substantive protection for all members of the District’s diverse community, while equally preserving and not derogating from the interests and rights of parents and guardians that the Ministerial Policy was designed to protect.

My clients are disappointed that your interest in my clients’ dialogue with District parents (amongst others) has not resulted in a continuing of similar substantive and reflective dialogue but rather in making *ad hominem* attacks – which attacks appear to my clients as calculated to cause damage to their reputations for your own perceived political gain.

On January 16, 2012 you participated in a Board resolution to “censure” my clients (the “Impugned Resolution”). That Board action, which continued your defamatory campaign against my clients, was both (i) *ultra vires* the Board’s powers, and (ii) procedurally inconsistent with applicable principles of natural justice. First, neither the *School Act*,

R.S.B.C. 1996, c. 412, nor the Board's Bylaws provide for a power of 'censure' of elected Board members. The Impugned Resolution was and is *ultra vires* the Board's powers. Second, even in cases of *intra vires* resolutions to discipline a member of a body such as the Board, it is settled law that principles of natural justice call for a process that, *inter alia*, provides timely notice to the persons whose conduct is in question, clearly defines the alleged misconduct, and provides for a hearing at which each side is permitted to call relevant evidence and information. The Impugned Resolution satisfied none of these requirements.

While expressly reserving all rights, at this time my clients do not wish the District to incur the expense of defending a proceeding under the *Judicial Review Procedure Act*, R.S.B.C. c. 241, to have the Impugned Resolution set aside by court order. My clients do not believe that the District's parents would be well served by causing such an expenditure.

However, my clients wish to remind you that the Board's Bylaws provide for indemnification of trustees only against claims for damages "arising out of performance of his her duties". That language is narrower than the reference to "intended performance of their duty" in the *School Act*. If my clients bring suit against any of you, in respect of the Defamatory Statements, or any of them, District parents will not incur any cost of defending the proceedings on your behalf – or the cost of indemnifying you in respect of an award of damages made.

My clients demand that you cease and desist in this present defamatory campaign and refocus your energies on serving the District under the jurisdiction conferred on you as trustees, pursuant to the *School Act*.

GUDMUNDSETH MICKELSON LLP



Jonathan D. Tweedale

Encls.



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January 10, 2012

Attention: Brian S. Brown, President

National Organization for Marriage  
2029 K Street NW, Suite 300  
Washington, DC 20006

**Re: Marriage Anti-Defamation Alliance Video**

I act for Ken Denike and Sophia Woo. My clients are trustees on the board of education (the "Board") for School District 39 (the "District"), a large, urban and multicultural school district serving the communities of Vancouver and the University Endowment Lands, in the Province of British Columbia.

Websites operated by you, at (i) [www.nationformarriage.org](http://www.nationformarriage.org) and (ii) [marriageada.org](http://marriageada.org) (the "Websites"), presently display on their respective front pages a video (the "Unauthorized Video") that includes interview footage of my clients (the "Interview Footage"). The Unauthorized Video is also available for viewing on your organization's YouTube page.

For the reasons set forth below, my clients demand that you immediately remove the Unauthorized Video from the Websites and from your organization's YouTube page and refrain from republishing it or the Interview Footage in any form or in any medium.

The Issue: A Need for Continuing Oversight Over Online Materials

In the summer of 2011, a concern came to the attention of my client Dr. Denike regarding a booklet available in District schools (the "Anti-Bullying Booklet").

The Anti-Bullying Booklet was originally published in 2006 as part of the 'Out in Schools' project. Out in Schools is an initiative of the Out on Screen Film + Video Society (the "Society") directed to ameliorating homophobia and bullying in schools.

The Anti-Bullying Booklet included a list of additional resources and websites, which my clients understand was reviewed when the Anti-Bullying Booklet was provided to District schools. At that time the additional resources and websites comprised age-appropriate content for schoolchildren.

However, one of the referenced websites recently underwent substantial changes – i.e. the website operated by Health Initiative for Men (“HIM”) at [checkhimout.ca](http://checkhimout.ca).

In mid-August of 2011, HIM posted new content on its site aimed at educating gay men about sexual health related issues. That new content employed graphic sexual text and imagery to convey its message (including graphic sexual videos and pictures) in connection with its ‘Hottest at the Start’ educational campaign. In my clients’ and many District parents’ view, that may well be an effective technique for communicating to adult males, but it is not age-appropriate content for 13-year-old schoolchildren.

Support for my clients’ view of the age-inappropriateness of the new content was provided by HIM on its site: “warning – these images may be considered to [sic] hot for some work places”.<sup>1</sup>

The broader issue, as identified by my clients in a press release dated September 29, 2011 in connection with a press conference on the same date, is that:

As the materials we use move online we need to be vigilant. A book, once printed is a known quantity. But an online resource may change drastically over time.

The Society eliminated hyperlinks to HIM’s site from its Out in Schools website in or about August 2011. In or about late October of 2011, following my clients’ press conference, the Society reprinted the Anti-Bullying Booklet, eliminating the references directing schoolchildren to HIM’s site, and replaced the copies of the Anti-Bullying Booklet in District schools with the revised version.

By raising the issues set forth above, it was never my clients’ intention to make any comment on the protracted U.S. debate concerning same-sex marriage. The issue raised by my clients had nothing to do with that debate. Same-sex marriage has been legal across Canada for over six years and the inclusiveness of the institution of marriage is not a live subject of political debate in this country.

### The Interview

In September and early October of 2011, news media from across North America and around the world picked up on the need for continuing oversight of school-sanctioned websites, as raised by my clients. My clients were contacted by a number of international news organizations in that time period.

In early October, my clients were contacted by a videographer, your agent Rick Stout, who requested an interview with my clients about the story. In email correspondence, Mr. Stout advised: “My purpose is to produce a sympathetic video of the issues from your perspective.” [emphasis added]. Mr. Stout disclosed that he was acting on behalf of the National Organization for Marriage in making that request, but he did not disclose that the interview would be for the purpose of advancing your organization’s traditional

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<sup>1</sup> <http://checkhimout.ca/blogs/sexual-health/hottest-at-the-start-explicit-content>

marriage agenda. Because the issue that concerned my clients, as set forth above, was potentially of interest to persons and groups regardless of their political persuasion, and in the context of an avalanche of inquiries from local and internationally based groups, the reference to your organization's name was not a red flag for them.

The Interview Footage was shot late in the evening on or about October 11, 2011, in Vancouver. Prior to commencing the Interviews, and prior to signing any consent form or waiver, my clients asked Mr. Stout what the Interview Footage would be used for. Mr. Stout informed my clients that it would be used for "a U.S. documentary program". The interviews were then conducted, and Interview Footage taken, on that basis and in reliance on those representations.

### The Unauthorized Video

A link to a draft version of the Unauthorized Video was subsequently sent to my client Dr. Denike on or about October 20, 2011. Dr. Denike was unable to view the video at the link provided to him and advised Mr. Stout accordingly. Mr. Stout took no further steps to facilitate Dr. Denike's or Ms. Woo's review of a draft version of the Unauthorized Video prior to its publication in early December.

As edited, captioned and hosted prominently on the front page of the Websites, including the website of your organization's Marriage Anti-Defamation Alliance initiative ("MADA") – a website devoted to your theory that defenders of 'traditional marriage' are subject to an ongoing campaign of harassment – the Unauthorized Video creates the following false and misleading impressions, amongst others:

- a) that my clients are supporters of the National Organization for Marriage, the MADA project, or of the NOM Institute and their agendas;
- b) that my clients' concern for ongoing oversight of materials approved for use in District schools relates in any way to the ongoing U.S. debate over the inclusiveness of marriage (which debate has already been resolved in Canada);
- c) that my clients are supporters of an agenda MADA characterizes as 'Defending & Protecting Religious Freedom';
- d) that my clients perceive they have faced "threats to their person, property or livelihood because they speak up for marriage";
- e) that my clients perceive they have been threatened for "standing for marriage";
- f) that my clients are supporters of organized opposition to same-sex marriage;
- g) that my clients believe that speech in support of traditional views of marriage is being censored or suppressed; and
- h) that my clients believe they have been threatened, harassed, or made to feel afraid because of their philosophical beliefs.

Any waivers or consent forms signed by my clients in connection with the Interview Footage or Unauthorized Video were signed on the basis of your agent's representations that:

- a) the Interview Footage would be used only in a video about the issue (i.e. the need for ongoing monitoring of school-sanctioned web materials) from my client's perspective; and
- b) the Interview Footage would be used only in a "U.S. documentary program".

Both of those representations are false. The Unauthorized Video is not about the issue from my clients' perspective. The Unauthorized Video exploits my clients' genuine concern to ensure that online materials are vetted for age-appropriateness – a concern shared by all stakeholders in the District's schools – to instead serve as a supposed confirmation instance of MADA's persecution theory. Further, the Unauthorized Video is not a U.S. "documentary program". Your agent, Mr. Stout, either knew this or should have known it at the time these representations were made. Regardless, any consents or waivers signed by my clients were induced by your agent's misrepresentations and are therefore void, at law.

Had you or your videographer disclosed to my clients that the Interview Footage was going to be used to further the agenda of the National Organization for Marriage, a lobby group with a self-proclaimed mission to serve "the growing need for an organized opposition to same-sex marriage", my clients would have refused to provide the Interview at the outset.

My clients have suffered and continue to suffer damage as a result of your misrepresentations and the false and misleading portrayal of my clients in the Unauthorized Video.

It is regrettable that while MADA's site asserts a core belief in the value of free expression, you have actively undermined my clients' expressive rights by presenting their speech in a misleading and exploitive manner.

Demand for Immediate Removal

My clients demand that you remove the Unauthorized Video from the Websites and your organization's YouTube page immediately and refrain from republishing it or the Interview Footage in any form or in any medium whatsoever.

We expect your compliance with this demand forthwith.

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Jonathan D. Tweedale