



No: S104978
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA TEACHERS FEDERATION

Plaintiff

AND:

RICHARD WALKER

Defendant

RESPONSE TO CIVIL CLAIM

Filed by: Richard Walker (the "defendant")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 -- Defendant's Response to Facts

1. The facts alleged in paragraphs 1 and 2 of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraph 3 of the notice of civil claim are admitted insofar as they suggest that the British Columbia Teachers Federation (the "Federation") is a trade union within the meaning of the *Labour Relations*

Code, RSBC 1996 Ch. 244, but are denied insofar as they purport to suggest that the Federation represents those teachers in this litigation.

3. The facts in paragraph 4 of Part 1 of the notice of civil claim alleging that the statement is defamatory and that only the parts of the article quoted are relevant, are denied.

Division 2 -- Defendant's Version of Facts

4. Paragraph 4 of Part 1 of the notice of civil claim is denied to the extent that it alleges the statement set out is defamatory.
5. Mr. Walker says that his publication of the article in question was: 1) made in his capacity as Chair of the College and as its spokesperson, 2) founded on the independence and governance policies of the Council passed at its December 2009 meeting, 3) was prepared after consultation with the Registrar of the College and various staff, and 4) was made as official comment on a matter of public importance namely the independence and governance of the College, the discipline mandate of the College and the request by a majority of members of Council of the College that the government appoint a fact-finder to conduct an inquiry into the governance of the College to ensure that the College was fulfilling its statutory mandate, and as such was not defamatory.
6. Further, the statement set out in paragraph 4 of Part 1 of the notice of civil claim is incomplete. The complete article is hereinafter referred to as the "Subject Article". The portion left out is as follows:

Organizations representing school trustees, parents, independent schools, superintendents and school administrators have joined our call for an investigator on College governance. Six former Chairs of the College from 1988 through to 2003 and three former Registrars have also joined the eleven council members who have called for an investigator. With such support, it is dismaying that the government has not yet responded!

The BCTF has long opposed the person complaint process and told its

members that “parents and other members of the public are ENCOURAGED to file complaints about teachers directly to the college” (emphasis added). The BCTF complained that this new procedure would “undermine professional autonomy” and that “the new complaints process will escalate and prolong problems” and “...only gives the illusion of problem solving.” (Mike Lombardi, “College targets Teachers”, BCTF Teacher Magazine, September 2003). BCTF policy continues to advocate that complaints should not be handled by the College until school district avenues have been exhausted.

Division 3 -- Additional Facts

Introduction

7. The Federation is a trade union within the meaning of the *Labour Relations Code, supra*, and, amongst other things, represents its members as bargaining agent. The purposes it is to promote, according to its constitution, are:
 1. To foster and promote the cause of education in British Columbia.
 2. To raise the status of the teaching profession in British Columbia.
 3. To promote the welfare of the teachers of British Columbia.
 4. To provide for the enlargement of the scope of the purposes of the Federation by permitting an alliance or affiliation to be made between the Federation and any other organization having purposes similar to the Federation.
 5. To organize and administer a Salary Indemnity Fund among its members.
 6. To organize and administer a Benevolent Fund among its members.
 7. To organize and administer such other services and programs as the Annual General Meeting may from time to time order.
 8. To finance and administer programs to encourage the employment of teachers in numbers consistent with staffing ratios developed by the profession.
 9. To finance and administer programs to foster effective teaching and appropriate learning conditions as approved by the profession.
 10. To regulate relations between employers and employees through collective bargaining in British Columbia.
 11. To create and charter locals of the Federation.

12. To continue to develop and offer programs of professional development for teachers.
 13. To safeguard teachers' pensions and act as joint trust plan member partner with respect to teacher pension funds.
 14. To continue to develop programs of social justice, and to provide international assistance to educational organizations.
 15. To promote the attainment of the purposes of the Federation by participation in educational, social, co-operative, electoral, political, economic, bargaining or other activity authorized pursuant to the by-laws of the Federation.
8. The British Columbia College of Teachers (the "College") is a corporation that was created by act of the B.C. Legislature in 1987 and was continued by the *Teaching Profession Act*, (now RSBC 1996, ch. 449).
 9. The statutory purpose of the College is now, pursuant to the *Teaching Profession Act*, s. 4, "to establish, having regard to the public interest, standards for the education, professional responsibility and competence of certificate holders and applicants for certificates of qualification and, consistent with that object, to encourage the professional interest of certificate holders in those matters."

History of the Federation involvement with the College

10. The Federation was adamantly opposed to the creation of the College, viewed it as an attack upon the Federation and developed policies and tactics and pressured the government to ensure that the College's role would be limited to teacher certification, certification review and decertification.
11. The Federation continues to express opposition to the College, including in the April 2010, *Teacher* magazine in an article by Larry Kuehn, the director of the Federation's Research and Technology Division and former president, who noted:

British Columbia is not unique in having a college of teachers imposed on the profession by a right-wing government. Nor is it unique in

experiencing tension between the two types of organizations, union and college.

...

Lozano said that the World Bank has identified creating colleges of teachers as one way to undermine teacher unions by setting up competing organizations. They identify teacher unions as the main impediment to the neo-liberal reforms they are trying to impose.

...

Weakening the union by setting up a competing structure is clearly a motivator of right-wing governments.

...

The college is an individualist and elitist concept of professionalism.

...

12. In 2003, allegedly in response to concerns that the College did not operate effectively as a self-regulating body, the government enacted Bill 51, dissolved the Council and replaced it with appointed members. The Federation perceived this as a further direct attack on the Federation and organized a dues boycott.

13. The person complaint process was also introduced in 2003 and, along with other changes instituted at that time, was opposed by the Federation.

14. The Federation, in its publication, *Teacher*, September 2003, Special issue, published comments about Bill 51, including:

a. By Mike Lombardi:

In a heavy handed move, the minister included provisions in the legislation that require teachers to report on colleagues' professional misconduct.

...

Parents and other members of the public are encouraged to file complaints about teachers directly to the college. This will undermine

professional autonomy and is in direct contradiction to school-district policies that spell out procedures for resolving parental concerns. As is the case in Ontario, the new complaints process will escalate and prolong problems. It only gives the illusion of problem solving.

...

Bill 51 could destabilize public education by creating an atmosphere of conflict and rancor in the system. It is an attempt to silence teachers from criticizing the disastrous education policies of the government ...

b. By Pat Clark:

Like its predecessor governments that went under the name Social Credit, the 21st-century version of Socreds, the B.C. Liberal Party, really hates the B.C. Teachers' Federation. The reason is quite simple. The BCTF is the most effective and vocal opposition the government faces.

...

The time-tested, although never successful, Socred/Liberal strategy in the face of such a challenge is to try to divide and silence the teachers' organization – the BCTF. Bill 51 is only the most recent in a long chain of such tactics.

...

Bill 51 is really just another attempt to hobble the BCTF – to pit member against member – to silence teachers – to make the BCTF less effective.

15. Tarry Grieve, the Chair appointed to the new Council of the College

subsequent to the enactment of Bill 51 published an opinion piece criticizing the involvement of the Federation in the College, in which he stated, amongst other things:

- The college, an independent body mandated to work on behalf of the public interest as it regulates the education profession, is run by a union mandated to advocate only for its members. This union represents less than half of B.C.'s licensed educators and is only accountable to them.

- For 15 years, the 20-member college council was comprised of 15 union members who met with the union before meetings to decide which way to vote.

The union also endorsed and financially supported candidates for election to the council with the result that other educators such as principals, superintendents and educators in independent schools were unable to win seats.

- For 15 years, the union-dominated council did not fulfil its legislated purpose, setting standards for the profession.
- ...
- Nor does the union-controlled council give the public an avenue for filing public complaints about educator conduct, despite the fact it is to act in the public interest.

16. In a news report in "The Now" from January 17, 2004, Mr. Grieve is reported as saying that, "by labeling the duty to report clause in the act as the "snitch" clause, the union is characterizing the duty to report as disloyal and inappropriate. As a 'union of professionals' we would expect that the union shares the college's view that the interests of children come first."

17. Eventually, after various by-law amendments and other changes were made, the government restored elected members to council but limited the number to 12, less than the 2/3 majority required to change by-laws.

18. The Federation has published various policies, some of which were in response to the changes made by the appointed council in 2003. Some of the policies of the Federation as they appear on its website on July 16, 2010 and which were in place at and around the time the Subject Article was published, are:

a. 7.A.01-BCTF Agenda for Change-BC College of Teachers

In May 2003, the BC Liberals seized control of the BC College of Teachers. The government appointed 20 people to the college council, directing them to change how the profession is governed. The political appointees adopted a number of radical changes with no input from the members of the profession.

After teachers withheld their college fees for 2003 – 04, the government agreed to allow professionals to elect 12 of the 20 council members. The newly elected council will have to review and consider a significant number of problems created and exacerbated by the political appointees.

...

ensure that elected councilors make up the majority of all council committee meetings.

...

ensure that local appeal processes are exhausted prior to filing a complaint with the BCCT.

...

ensure that college policies and procedures require boards to report serious disciplinary matters.

...

not routinely publish names of members involved in discipline cases.

...

b. 7.A.03 – That the College Council should:

1. Define the structure and services of the college to provide for certification, certification review and de-certification.

...

5. Ensure that elected councilors make up the majority of all council and committee meetings.

...

8. Ensure that policies and procedures put in place by the council do not require boards to report to the college minor disciplinary actions ...

c. 7.A.09 – That the chairpersons of BC College of Teachers' Standing Committees be assigned only to elected members of the college council.

d. 7.A.02 – 1. That the BCTF sponsor meetings of those councilors who are BCTF members, to enable these councilors to

a. Discuss directions for the council and college;

b. Review relevant BCTF policies and procedures;

...

2. That in addition to ongoing liaison meetings with BCTF members of the College of Teachers Council, the BCTF Executive Committee schedule at least two one-half day sessions each year with BCTF members on the College of Teachers Council to discuss college matters.
- e. 7.A.06 – That all councilors who are BCTF members be invited to attend BCTF AGMs at no cost to the BCTF.
- f. 7.A.10 – That the statutory mandate of the College of Teachers be limited to:
1. Establishing requirements for issuing teachers' certificates;
 2. Issuing teachers' certifications; reviewing a teacher's certificate if the teacher has resigned or been fired without objection; accepting a surrendered certificate without investigation, subject to an agreed-upon form of admission or restriction on reapplying;
- [It is believed that the Federation has changed the wording of this policy as of March 2010, but that is not reflected on its website.]*
3. Approving teacher education programs for pre-service teachers.
- g. 7.A.16 – Zonal Endorsation Grants and College Election Grants
1. Local nominees' expenses for zonal endorsation
- That in seeking endorsation to become the BCTF-endorsed candidate in a college zone:
- a. The nominee from each local may, upon application to the BCTF, be reimbursed at current BCTF rates, for any necessary release time, travel, meal and accommodation expenses incurred in attending the endorsation meeting in each local in the zone;
- ...
2. Endorsed candidates' expenses for college elections
- That if a college election is necessary in any zone, the BCTF-endorsed candidate may apply for funding as follows ...
- h. 7.A.18 – Zonal Selection of BCTF-Endorsed Candidates
1. Eligibility

Only active BCTF members are eligible for BCTF endorsement as candidates in BC College of Teachers elections.

...

Criteria for seeking BCTF endorsement

That any member seeking to become the BCTF-endorsed candidate in any college council zone be requested to confirm that they are prepared to:

1. Regularly communicate with locals in their zones.
2. Attend BCTF-sponsored meetings of elected councillors.

19. In accordance with these policies, the Federation will fund and support endorsed members' expenses for election to the College Council and then regularly liaises with those endorsed members about College business and the Federation's policies. In Volume 16, Special Issue, *Teacher Newsmagazine*, September 2003, a Federation publication, Mike Lombardi for the Federation stated that its endorsed candidates, once elected to the College Council, "should be accountable to the members who elected them...". On only a few occasions has a non-endorsed candidate been elected to Council.

20. Section 9.1 of the *Teaching Profession Act* was enacted in May 2004 and requires members of Council to take an oath of office. That oath is prescribed by the *Teaching Profession Act, Oath of Office Regulation*, which provides:

I do swear and /or solemnly affirm that:

- I will abide by the *Teaching Profession Act* and I will faithfully discharge the duties of the position, according to the best of my ability;
- I will act in accordance with the law and the public trust placed in me. I will act in the interests of the College as a whole;
- I will uphold the objects of the College and ensure that I am guided by the public interest in the performance of my duties;
- I have a duty to act honestly. I will declare any private interests relating to my public duties and take steps to resolve any conflicts arising in a way that protects the public interest;

- I will ensure that other memberships, directorships, voluntary or paid positions or affiliations remain distinct from work undertaken in the course of performing my duty as a Council member;

21. A June 7, 2004 email memo to local Federation presidents and members of the Representative Assembly from staff member Lynne Synclair includes the following section:

Eight Top Reasons to Vote Yes

The executive Committee is recommending to the special RA on June 12th, that members participate in the 2004 elections for the college council.

Here are the 8 top reasons to vote yes:

1. We have an opportunity to elect 12 teachers to the college council. They will constitute a majority on the 20-member council.
2. By participating in the elections the political hacks on the appointed council will be dismissed by the end of September 2004.
3. Although the 12 councillors do not constitute a two-thirds majority of council, they can use their majority to set the budget and fee of the college in a manner that restricts the mandate of the BCCT – review staffing decisions of the college.
 - ...
 - Not develop policies required to implement BCCT by-laws such as teacher recertification – call on the minister to make changes to the Teaching Profession Act
 - ...
 - Restrict the number of complaints that are processed by the college and modify the person complaints process so that local appeal processes are exhausted before a complaint is accepted by the college.
 - Not implement the online registry of members.
 - Ensure that policies and procedures are in place by the council so that boards are [sic – should read “are not”] required to report minor disciplinary actions to the BCCT
 - ...
 - Not routinely publish names of members involved in discipline cases
- ...
 6. An elected council will be responsible to the membership and not the government.
 7. We will be like other professions a majority of the governing board will be elected by the members.
 8. Teachers will be in a position to influence elected members.

22. After this email was circulated, there were articles published reflecting concerns that the Federation was attempting to undermine and control the College. The Education Minister, Tom Christensen, was reported as noting, "It appears to me that the union is very much trying to get in a position of influencing individual members who will be on that college council, and by extension ... influencing the independents themselves. And in my view, that severely undermines the whole functioning of a professional, self governing body."

23. In a letter dated January 20, 2005, addressed to the President of the Federation, the Minister, Mr. Christensen, commented on a Federation brief to the College and noted:

The intent of the recommendations appears to be to return the College to its profile and position prior to the appointment of the interim Council and prior to amendments to the *Teaching Profession Act*. ...

I find it most disappointing that the BCTF would actively seek to block legal provisions that passed without dissent from any party in the Legislature. After all, it is the Legislative Assembly, not the Teacher's Federation, that is accountable to voters for the public policy framework in this province.

It is very important – both to the teaching profession and to public education – that we have a healthy College of Teachers that is allowed to function in the public interest. It cannot be used by any constituency as a tool to protect the interests of any one group, teachers, principals and vice-principals, superintendents or government.

This document causes me renewed concern regarding the ability of the College to meet its mandate of working in the public interest. Council members, whether they are teachers, principals, superintendents or parents, must be independent of their organizations.

The "direction" given to Council members who are also members of the BCTF creates pressure for these Council members and reduces the likelihood that they can or will discharge their duties independently.

Of all the partner organizations – some of which are also members of the College – it is only your organization that seeks to direct the affairs of the College in this manner. I request that your organization undertake to

remain “at arm’s length” from the College and allow it do its work independently and in the broad public interest.

24. Specifically with respect to discipline, the Federation has taken the position that: 1) the College’s statutory mandate should be limited to removal of certificates, and 2) the College should only be involved with serious discipline cases and then only after other avenues of discipline have been exhausted.
25. The Federation has stated that it is of the view that discipline by the College represents double jeopardy to the teachers involved.
26. The Federation position regarding discipline was perceived by some members of the Council and others as, inter alia: 1) contrary to its statutory mandate, 2) contrary to the concept of a self-regulating profession, 3) a misunderstanding of the concept of double jeopardy and 4) a danger in limiting Council from monitoring behaviors across the province of teachers who may engage in activities that, while perhaps not serious in and of themselves, could be precursors to serious disciplinary matters.
27. Issues regarding discipline reporting requirements have also been the subject of debate and were addressed by the Federation in a letter to the Minister of Education dated March 18, 2005, in which the Federation was responding to an invitation to provide feedback on proposed amendments to the *School Act* regarding discipline. The ministry had asked the following question: “Should there be additional reporting requirements to capture other behavior that should be reported to the College (e.g. boundary violations and grooming behavior not included in section (b))?” The Federation response was: “There is no need for additional reporting requirements to capture other behavior. Boundary violations and grooming behavior are clearly covered by (1)(b)(iii). All members of the education community should be expected to understand how emotionally harmful such conduct is to students.”
28. The extent of the requirement to report remains a topic of controversy. Council members and others share concerns that the position of the

Federation would preclude the reporting of minor disciplinary infractions that could lay the groundwork for subsequent actions that seriously harm children and that the obligation on the Superintendent, under s. 16(6) of the *School Act*, RSBC 1996, Ch. 412 is broad and requires the reporting of any disciplinary matter that is, "in breach of the college's standards of professional conduct or competence" regardless of how minor.

Richard Walker

29. Richard Walker is the Chair of and spokesperson for the College. He was first elected on December 8, 2006 and his present term expires on July 31, 2010.

30. In his position as Councilor and Chair, Mr. Walker has been exposed to circumstances that have led him to question the involvement of the Federation with the College, including the Federation endorsement of and liaison with endorsed Council members and the potential for advocacy by endorsed members. Because of some of those concerns, Mr. Walker, who was initially a Federation endorsed Council member, gave up his Federation endorsement and ran in the College election as an 'independent'. He was successful and one of the only non-endorsed members to have ever been elected to the Council.

31. Particular examples of matters that concern Mr. Walker include:

- a. Federation endorsed Councilors tend to have had extensive experience as Federation union advocates and tend to view their involvement through that lens.
- b. Of the current 12 elected members of Council, 11 were or are Federation local Presidents and the other is a full-time grievance officer.

- c. Federation endorsed members of Council have acted as advocates in the employment context for teachers that were also under investigation or to be investigated by the College, although they may not have had direct involvement with the College process.
- d. The Federation held meetings with Federation endorsed Council members for 21 years without authorization from the College. Most recently the Federation has invited all Council members to such meetings, but Mr. Walker and others have concerns that such meetings with one interest group are inappropriate. The College tried to address the interest of the Federation in advocacy by recommending structuring a meeting with all interested groups, but the Federation would not agree to discontinue its meetings.
- e. When Mr. Walker gave a speech to the Federation Representative Assembly in 2007 he announced that of 125 public disciplinary complaints made to the Council none had resulted in discipline of a teacher and that announcement was met with rousing cheering and applause from the audience. There was no questioning about the statistic.
- f. The College has never had a hearing on a competency issue that resulted in the cancellation of a teaching certificate, although there have been some indefinite suspensions.
- g. The Preliminary Investigation Sub-Committee ("PISC") is charged with reviewing all complaints and dealing with them up to the issuance of a citation which will result in a hearing. Mr. Walker and others have developed concerns about PISC decisions and College decisions generally as a result of the following: 1) After the meeting referenced in 31(e) above, Mr. Walker attended the Bill Good show, where he was questioned by the host about the lack of public complaints resulting in discipline and some parents concerns; 2) As an educational tool,

members of Council have reviewed, on an anonymous basis, PISC decisions. These reviews have caused Mr. Walker and others concern that some PISC decisions are questionable; 3) As Chair of the Council Mr. Walker has on occasion been contacted directly by parents whose complaints have been denied who object to the decisions made; 4) Mr. Walker has on one occasion sat in on the deliberations of the PISC panel, and was struck by the advocacy attitudes displayed by panel members who were Federation endorsed councilors; and 5) As Chair Mr. Walker has gotten feedback about College hearing decisions and PISC decisions from senior college staff questioning the decisions made.

- h. The statistics maintained by the College evidence that from 2003 to in or about April 2010, 270 person complaints had been made by parents and other members of the public against teachers, but none of those complaints had resulted in the discipline of a teacher.
- i. The handling of public complaints by the College has been the subject of negative comment in the media.

32. Discipline is a fundamental role of the College. It is a closed and confidential process and therefore open to abuse and requires that there be the utmost confidence in the committee. Mr. Walker, other Council members and others have concerns that the involvement of the Federation with its endorsed Councilors gives an appearance of conflict and reasonable people would have concerns that discipline decisions of the committee could be affected.

33. Mr. Walker was the spokesperson for the Council and was expected to speak to the media and others on behalf of the College and Council and historically did so without motion from the Council, e.g. the Bill Good show referenced above was not specifically sanctioned by the Council.

34. Mr. Walker was, in the publication of the Subject Article, acting in good faith and on behalf of the College or Council and not otherwise. In the alternative, Mr. Walker was purporting to act on behalf of the College or Council and not otherwise.

35. Further, in the publication of the Subject Article, Mr. Walker was making official and fair comment on a matter of public importance, namely the independence and governance of the College, the discipline mandate of the College and the request by a majority of members of the Council of the College that the government appoint a fact-finder to conduct an inquiry into the governance of the College to ensure that the College was fulfilling its statutory mandate.

Independence and Governance of the College

36. Both during and prior to Mr. Walker's tenure as Chair, there have been concerns both within the College Council and otherwise, that the policies of the Federation, including in endorsing and liaising with endorsed Council members, inter alia: 1) result in endorsed Council members having divided loyalties, 2) that such meetings are intended to and do influence endorsed councilors to follow or promote Federation policies, including ones that are contrary to the *Teaching Profession Act* provisions, and 3) that such councilors are potentially in a conflict of their duty to the College (and its statutory duty to the public) and their interest in adhering to the mandate of the Federation.

37. Further, although the Federation has recently revised its position regarding liaising with endorsed members such that all Council members are to be invited to such meetings, this is still perceived as giving one interest group an unacceptable ability to lobby and control the Council of the College.

38. Further, there are and have been concerns that the stated view of the Federation that endorsed Council members are responsible to teachers may

conflict with the statutory mandate of the College to act in the public interest, and may put councilors in a conflict or in breach of their oath of office.

39. Further, there are and have been concerns that the stated policies of the Federation regarding the reporting of discipline matters to the College improperly limited the mandate of the College and could be potentially dangerous in allowing undetected 'minor' breaches of the standards to go unrecorded, potentially leading to more serious breaches of standards and ultimately harm to students.
40. Further, there are and have been concerns that the potential conflict, as set out above, gives the appearance of a potential for unacceptable influence on discipline decisions.
41. Governance concerns were expressed to the Federation by Mr. Walker during his tenure as Chair of the College, including in various reports delivered by him to the Representative Assembly of the Federation in 2008 and 2009. Prior to the November 2009 meeting, there was an issue raised by the BCTF about the content of Mr. Walker's report, suggesting that portions were his personal opinion. Mr. Walker refused to have sections redacted from his report, as the complete report was tendered on behalf of the College. As a result, the report was tendered to the meeting, but with a BCTF rebuttal attached and Mr. Walker was told that he would not be invited to speak at the meeting. The BCTF has maintained that position and Mr. Walker has not since spoken at a meeting of the Representative Assembly.
42. As a result of concerns regarding the governance of the Council, a Governance Sub-Committee was struck by the Council. A report to that committee in November 2009 identified, amongst other things, concerns regarding the Federation endorsement of councilors and liaison with endorsed councilors and noted that such matters could result in a reasonable apprehension of bias on the College Council and place the independence of the College in jeopardy. It further identified concerns that self-regulation of

the teaching profession could be vulnerable if it was perceived that the College was not acting in the public interest.

43. At a College Public Council Meeting on December 4, 2009, several motions were carried, including:

a. Chair

The Chair of Council exercises his/her authority as co-spokesperson and speaks within the framework of the regulatory mandate, the bylaws, policies and decisions of Council.

The Chair shall, in consultation with the Registrar, determine where it is suitable to utilize staff in preparing his/her written communications in order to promote an institutional style of public communications by the College.

b. Council

Only the Chair, Registrar or persons delegated by them, may speak for the College.

There would only be one official communication from the College and it would be distributed to all intended recipients. Separate messages will not be issued to individual education groups or constituencies within these groups, but all groups would have access to the organizational communication.

c. ...

d. Relations with other education groups

Establish a liaison procedure that would provide for periodic opportunities for all education groups to meet with Council and/or committees of Council;

Establish a prohibition against any unauthorized meeting between Council members and other education groups for the purposes involving and related to College business.

Facilitate meetings between the Chair, Vice Chair and Registrar of the BCCT with representatives of the BCTF and ABCDE in an attempt to discuss an improved and more independent relationship;

Establish and recommend any other measures that could strengthen the independence of the BCCT in its relationship with education groups ... In conjunction with the Communications Committee, examine and recommend ways to enhance communications plans with an intention to explain to the public and education groups the role of the BCCT and regulatory bodies in order to promote the importance of the BCCT's independence.

44. The Governance Sub-Committee delivered a Report and Recommendations dated January 27, 2010. Amongst other things, the following recommendations were made:

c. That Council request that government enact the following Conflict of Interest Rules by Regulation:

Conflict of Interest Rules

1. All Candidates for election or appointment to the Council and all Council members:

a. must not hold a position as an officer or employee of any association, corporation or trade union that is engaged in advocacy for members of the College,

b. must not accept endorsement or financial support from any association, corporation or trade union that is engaged in advocacy for members of the College, and

c. must not act in a manner that might result in their responsibilities and duties to any other organization being incompatible with or in conflict with their duties as Council members.

That Council adopt the following amendments to policy.

P1.1 Communications and Access to College Information

P1.1.03 Communication with Members

[Move current Policy P1.1.03.1 on conferences to Policy P1.1.04.]

P1.1.03.1 Matters about which the College is legally required to give notice to members, such as fees, elections or notice of annual meeting, will be communicated on the College website, in the College magazine and may be communicated in other ways.

P1.1.03.2 Council members shall communicate with members using only authorized written communications of the College or as otherwise approved by the Council or Registrar. There shall be no

communication in the name of the College other than as authorized by Council or the Registrar and Chair of Council.

P1.I.03.3 Council members shall meet with representatives of partner groups only with the authorization of the Council or Registrar and Chair of Council.

P1.I.03.4 Policies P1.I.03.2 and P1.I.03.3 do not apply to activities of Council members related to elections for Council from the date of the call for nominations through the date by which ballots must be received by the College.

P1.I.05 Spokesperson
[Delete current P1.I.05]

P1.I.05.1 The Chair of Council and the Registrar, as spokespersons for the College, or any Council member designated by the Chair or Registrar to speak for Council, shall speak in a manner consistent with the Teaching Profession Act, College bylaws, policy and decisions of the Council.

P1.I.05.2 The Chair and members of the Council delegated to speak for the Council shall, where practicable, seek the assistance of the Registrar in preparing communications from the Chair in the name of the College.

P1.G Committees of the Council

P1.G.04 Discretionary Committees [Delete current P1.G.04 and replace with:] 4

P1.G.04.1 Partner Liaison Committee

P1.G.04.1.1 The Partner Liaison Committee shall comprise the following: Members of the Council, and representatives from each of the following: ABCDE, BCCPAC, BCPVPA, BCSSA, BCSTA, BCTF, FISA, FNEESC, and FNSA.

P1.G.04.1.2 The Partner Liaison Committee is not a deliberative body. Following meetings of the Committee, the Council may deliberate matters arising from committee proceedings or may refer matters to other College committees.

P1.G.04.1.3 The Partner Liaison Committee shall meet at least twice each year and at additional dates as determined by the Council.

P1.G.04.1.4 The Vice-Chair of Council shall chair the Partner Liaison Committee.

P1.G.04.1.5 The Registrar will send a request for agenda items to partner groups prior to the meeting and will circulate an agenda at least one week prior to the meeting date.

45. The dissenting Council members engaged in “filibuster type” activity at the January Council Meeting to de-rail the adoption of the new governance policies and continue to oppose their adoption.
46. On April 6, 2010 the majority of members of Council of the College called on government to conduct an inquiry into the governance of the College. The request was signed by a majority of council members, including both some elected and all appointed members. The request was supported by the B.C. Confederation of Parent Advisory Councils, the B.C. School Trustees Association, the Federation of Independent School Associations, the B.C. School Superintendents’ Association, and the B.C. Principals’ and Vice Principals’ Association, as well as former Registrars and Chairs of the College.
47. After consultation with the Registrar of the College and various staff, Mr. Walker submitted the Subject Article to the Vancouver Sun in his capacity as Chair of the College.
48. The Federation, in response to the Subject Article, has wrongly characterized sections of the article in ways that are knowingly misleading and inflammatory, including asserting: 1) that Mr. Walker was suggesting that the Federation had anything to do with the Ellison matter, 2) that Mr. Walker was manufacturing a crisis for government intervention, 3) that prior to the Subject Article there were no public concerns regarding the work of the College, 4) that Mr. Walker was “intentionally denigrating the reputation of the teaching profession in British Columbia and promoting the false allegations that the BCTF interferes with the BCCT’s discipline, competence, and complaint processes.” And 5) that he was doing so from a personal agenda of animus towards the Federation.

49. The Federation's actions in response to the Subject Article have been directed at stifling legitimate debate, besmirching Mr. Walker's reputation and isolating him from colleagues in the teaching profession, using Mr. Walker as an example to intimidate BCTF members and others, and have been directed at Mr. Walker in an effort to ensure that he is not re-elected to the College Council, or as Chair.

50. On May 18, 2010 the government appointed Don Avison to conduct an inquiry into the governance of the College.

51. On June 4, 2010, 11 of 20 members of the council of the College passed the following motion:

That Council:

- a) Support the appointment of the fact finder and cooperate with his fact-finding mission
- b) Defer consideration of governance recommendations until government responds to the fact-finder report ...

Conclusion

52. Mr. Walker says that his publication of the article in question was: 1) made in his capacity as Chair of the College and as its spokesperson, 2) founded on the independence and governance policies of the Council passed at its December 2009 meeting, 3) was prepared after consultation with the Registrar of the College and various staff, and 4) was made as official comment on a matter of public importance namely the independence and governance of the College, the discipline mandate of the College and the request by a majority of members of Council of the College that the government appoint a fact-finder to conduct an inquiry into the governance of the College to ensure that the College was fulfilling its statutory mandate.

Part 2: RESPONSE TO RELIEF SOUGHT

53. The defendant opposes the granting of the relief sought in paragraphs 1 to 9 of Part 2 of the notice of civil claim and says the plaintiff's claim should be dismissed.
54. The conduct of the Federation as set-out herein was calculated and deliberate on its part, is outrageous, high-handed and reprehensible and ought to be condemned in an award of special costs to the defendant.
55. In the alternative, costs should be awarded to the defendant.

Part 3: LEGAL BASIS

56. The Defendant denies that the words contained in paragraph 4 of the Notice of Civil Claim meant or were understood to mean or were capable of meaning any of the meanings alleged in Part 3 of the Notice of Civil Claim.
57. Further or in the alternative, as to the words set out in the Subject Article, the Defendant says that in so far as the words consist of statements of fact, the words are true, and in so far as the words consist of expressions of opinion they are fair comment made in good faith and without malice upon facts which are a matter of public interest, specifically the independence and governance of the College, the discipline mandate of the College and the request by the College that the government appoint a fact-finder to conduct an inquiry into the governance of the College to ensure that the College is fulfilling its statutory mandate.
58. In particular, the following statements are statements of fact, and true:
- a. Since 2003, 270 complaints have been made by parents and other members of the public against teachers. Not one of these complaints has resulted in the discipline of a teacher. This "person complaint" process was one that was introduced in 2003;

- b. The call for an inquiry was made by 11 of the 20 members of council;
- c. Organizations representing school trustees, parents, independent schools, superintendents and school administrators have joined our call for an investigator on College governance. Six former Chairs of the College from 1988 through to 2003 and three former Registrars have also joined the eleven council members who have called for an investigator.
- d. The BCTF has long opposed the person complaint process and told its members that “parents and other members of the public are ENCOURAGED to file complaints about teachers directly to the college” (emphasis added). The BCTF complained that this new procedure would “undermine professional autonomy” and that “the new complaints process will escalate and prolong problems” and “...only gives the illusion of problem solving.” (Mike Lombardi, “College targets Teachers”, BCTF Teacher Magazine, September 2003). BCTF policy continues to advocate that complaints should not be handled by the College until school district avenues have been exhausted. They also continue to assert that only the most serious offenses by teachers (serious is undefined) should be reported to the College by School Boards.

59. The balance of the Subject Article consists of fair comment, consistent with the definition in *WIC Radio v. Simpson*, 2008 SCC 40; [2008] S.C.J. No. 41; 2008 Can. Sup. Ct. LEXIS 51 at paragraph 27:

In *Ross v. New Brunswick Teachers' Assn.* (2001), 201 D.L.R. (4th) 75, 2001 NBCA 62, at para. 56, the New Brunswick Court of Appeal correctly took the view that "comment" includes a "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof."

60. The law of defamation applied consistently with the value of freedom of expression enshrined as a fundamental Canadian right in s. 2(b) of the

Canadian Charter of Rights and Freedoms could not found liability for the Subject Article.

61. Further, the Subject Article was a responsible communication on matters of public interest and Mr. Walker used all diligence in verifying his facts having regard to the seriousness of the issue, that it was a matter of public importance, that there was urgency, that his sources were reliable, that the position of the Federation had and has been reported and that there was public interest in the fact of the debate and its impact on the College.
62. The *Teaching Profession Act*, s. 16, provides that the Chair of the College is the head of the College.
63. By-law 1.1.05 of the College provides that the Chair or Registrar is normally the official spokesperson for the College.
64. Section 42 of the *Teaching Profession Act* provides that an action for damages does not lie against Mr. Walker for anything done or omitted by him in good faith while acting or purporting to act on behalf of the College and Council.
65. In response to the entire Notice of Civil Claim, the Defendant says that if he was guilty of any defamation as alleged or at all, which is not admitted but is specifically denied, the Plaintiff has not suffered any damage to its financial position or in relation to its trade or business.
66. In response to the entire Notice of Civil Claim, the Defendant says that if he was guilty of any defamation as alleged or at all, which is not admitted but is specifically denied, then the alleged defamation was not the proximate cause of, nor did it contribute to, any loss or damage allegedly suffered by the Plaintiff, or in the alternative, such loss or damage was too remote and is not recoverable at law.

67. In further answer to the allegations contained in the Notice of Civil Claim, the Defendant says, and the facts are, that if the Plaintiff did sustain any loss or damage as alleged or at all, which is not admitted but is specifically denied, then the Plaintiff has failed to mitigate any such loss or damage.

Defendant's address for service:

Holmes & King
1300 – 1111 West Georgia Street
Vancouver, British Columbia V6E 4M3
Attention: Leslie J. Muir

Fax number for delivery: (604) 681-1307

E-mail address for service: ljmuir@mhklaw.com

Date: 28/July/2010

A handwritten signature in black ink, appearing to read 'L. Muir', is written over a horizontal dotted line.

Signature of lawyer for defendant
Leslie J. Muir

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.