LIBERTAS LAW

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Jennifer Roberts
Assistant Superintendent of Schools
School District 46 – Sunshine Coast
494 South Fletcher, P.O. Box 220
Gibsons, BC V0N 1V0

Sent via email to [redacted]

Dear Ms. Roberts,

Re: Lara Yates – Section 177 Appeal

The following is our response to the information provided by Principal Pednaud in her letter of January 23. It should be reviewed in conjunction with our letter of January 13.

Impact on School Community

1. While we appreciate that the Superintendent asked the principal to address the "impact on the learning community", this appeal is about whether the principal had the legal authority to issue a section 177 order under the circumstances. We submit that it was not done in compliance with the *School Act* and Provincial Guidelines (attached) and was therefore illegal. Other than assessing the immediate safety risks at the time of issuing the order—while the disruption is occurring—section 177 does not require any other post-event assessment. Accordingly, the "impact on the school community" is an irrelevant consideration on this appeal.

2. In any event, the fact that high school-aged "students and staff required support from the counselling team and administration" (in some cases continuing almost two months later) because they heard someone call out mildly inflammatory words of opposition to the land acknowledgement ritual, is a testament to why some parents feel the need to speak out with concern about what is happening in public education. If hearing opposition to a controversial ritual has caused "harm" and impacted "safety" requiring "targeted support" and a "debrief", plus a notice home to parents for additional support, then this is indicative of an abnormal, unhealthy, and/or ideologically captured institutional environment. The alternative possibility is that this

reaction was deliberately generated and encouraged to rally the troops against Ms. Yates and deter others from speaking up.

3. Not all indigenous people are on board with land acknowledgments, and it is patronizing to assume so. This family is part of the Indigenous Learning program because of their heritage and/or connection to it, and they obviously oppose the ritual.

Rationale

4. The principal states that "the risk of removing her was greater than the risk of allowing her to remain, given that the land acknowledgement had passed." This assessment is without foundation, given Ms. Yates' stated intention (prior to her expression) that she would disrupt—specifically and in a limited manner—*only* the land acknowledgement portion of the performance. True to this stated intention, she sat quietly afterward. The principal admits that she expected the disruption would be limited to the land acknowledgement and is merely speculating about future risks, which would not form the basis for a proper application of section 177 in any event.

5. The legislation and the Provincial Guidelines make it clear that section 177 is only to be used where there is an immediate necessity to remove someone who is causing a "significant *and* ongoing" disruption or where there is a safety risk.[1] Additionally, School District 46's own policy on maintaining order (attached) plainly connects *disruption* with *removal* in the same form as section 177.[2] Ms. Yates' interruption did not pose a safety risk to anyone. Furthermore, given that she sat quietly and remained that way after completing her expression, there are no facts to support an argument that Ms. Yates' expression was both "significant and ongoing". There was no basis to remove Ms. Yates, and indeed, it was not done and the section did not apply. The principal is attempting to find a basis of authority in section 177 where there is none and is improperly using this tool to deliver an unauthorized *ex post facto* punishment of the parent. This is impermissible.

6. The principal states that her s. 177 order was made to ensure a "safe and caring space" for students and staff. There is evidently no consideration given to making public school a "safe and caring space" for students and families (and staff, for that matter, if any remain) who disagree with the political ideology being impressed upon the school community. Whether they are "settlers", white, Christian, conservative, male or otherwise viewed as an "oppressor" under the critical social justice ideology

[1] See pp. 1-2 of the Provincial Guidelines: Maintenance of Order under section 177 of the *School Act*, online at https://www2.gov.bc.ca/assets/gov/education/administration/kindergarten-to-grade-12/safe-caring-orderly/guidelines-section-177-school-act.pdf.
[2] See SD46 Administrative Regulation 3260, online at: https://sd46.bc.ca/wp-content/uploads/2019/01/3260-Trespassing_and_Maintaining_Order.pdf.

that has become embedded in our education system, *these* students must endure constant moral injury while keeping their mouths shut. When one of them, or their family member, speaks up, an excessive and illegal punishment is imposed, as is the case here. Such students are equally entitled to a safe, caring, inclusive and *ideologically neutral* public education.

7. The *Charter of Rights and Freedoms*, which is applicable to public bodies like schools and school boards, protects and guarantees the right to express opinions and not face penalty from an arm of the state for doing so. Speech that challenges, disrupts or offends is precisely the kind of speech that the *Charter* is meant to protect—speech that everyone finds delightful or appropriate needs no such protection.

8. Political speech, in particular, enjoys a high degree of *Charter* protection from state interference. As the Supreme Court of Canada noted in *Committee for the Commonwealth of Canada v. Canada*, 1991 CanLII 119 (SCC), [1991] 1 SCR 139:

> Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure. As expressed by Jackson J, in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), at p. 642, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein". [Emphasis added.]

Accordingly, and respectfully, we seek a finding that the s. 177 order was issued illegally and in violation of the *Charter*.

Sincerely,

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Barrister & Solicitor