

February 8, 2021

Tim Wilbur
Editor-in-Chief
Canadian Lawyer Magazine
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Dear Mr. Wilbur:

Re: Op-ed concerning British Columbia courts' initiatives on forms of address for parties and counsel in proceedings

We write to you as practising lawyers and on behalf of The 519 regarding the Canadian Lawyer Magazine's disappointing editorial decision to publish an op-ed titled "British Columbia's practice directions on preferred gender pronouns in court are problematic" by Shahdin Farsai.

The 519 is Canada's most prominent LGBTQ2S+ community centre and service provider. We advocate for the health, happiness, and full participation of LGBTQ2S+ communities in Canadian society.

This letter is not a "response" or "rebuttal" to Ms. Farsai's op-ed. We are pleased that Canadian Lawyer Magazine has now removed this harmful, transphobic, and legally-inaccurate piece of writing from its website, following the grassroots calls of lawyers from across the country to do so. The identity of trans and non-binary people is, quite simply, not up for debate. However, in our view, more is required from Canadian Lawyer Magazine than simply removing the op-ed in the circumstances.

Ms. Farsai's op-ed was filled with transphobic rhetoric that was both hateful and harmful to trans and non-binary people, whose right to be free from discrimination on the basis of gender identity is enshrined in human rights statutes across Canada. Among other things, Ms. Farsai deliberately and repeatedly misgendered a transgender teen fighting to affirm his gender identity. These comments were made in the context of the heartbreaking reality that trans and non-binary youth experience rates of self-harm and suicide that far exceed those of the general population, persistent discrimination in accessing health care services, and, far too often, rejection by the very friends and family members who are supposed to care for them most.

To support the proposition that treating justice system participants with dignity and respect by using their proper pronouns could somehow compromise a judge's "impartiality", Ms. Farsai quoted an obscure passage from a decision written by a judge of a U.S. appeals court. The op-ed omits that the author of that passage, Judge Stuart Kyle Duncan, built his career as a lawyer around what a coalition of American LGBT advocacy organizations

characterized as “pursuing extreme positions that target members of the LGBT community, and especially transgender Americans.”¹ This included work opposing marriage equality, the equality rights of same-sex parents, and basic equal opportunity protections for trans people. In its proper context, the passage cited by Ms. Farsai is not an “eloquent” articulation of legitimate concerns about judicial impartiality, as the op-ed characterizes it; rather, it is the pronouncement of an individual who dedicated his career as a lawyer to denying queer and trans people basic rights to equality and dignity, and who appears to be set on continuing to do so as a judge.

Further, the misleading arguments Ms. Farsai raised regarding “compelled speech” not only fundamentally misrepresented the legal concept of “absolute privilege” in courtroom settings, but also entirely ignored the myriad circumstances in which justice system participants are “compelled” to conduct themselves in specific ways in court. These include, but are not limited to:

- requiring participants to stand (if they are able) when presiding judges enter and leave the courtroom, and when addressing the court;
- requiring participants to address judges as “Your Honour” or “Justice”, and in some provinces, “My Lord” and “My Lady”;
- requiring participants to refer to one another by their proper names and not in any type of pejorative manner; and,
- prohibiting participants from disrupting proceedings.

Despite Ms. Farsai’s assertion to the contrary, there is no “absolute privilege” that permits lawyers to conduct themselves however they wish in court without consequence. Counsel who appear regularly in court will understand that failing to comply with any of the above-mentioned restraints on their conduct could result in admonishment by the judge, being required to comply with the judge’s direction concerning conduct, and, in extreme cases, being found in contempt of court and/or subject to law society discipline proceedings.

It is very concerning that in the first instance, it was somehow consistent with Canadian Lawyer Magazine’s editorial standards to publish an op-ed that was not only filled with harmful transphobic rhetoric, but was also littered with inaccuracies about the state of Canadian law and the conduct of legal proceedings in this country. We and your audience expect better.

The Canadian justice system and the legal profession have a history of being unwelcoming, hostile, and ultimately harmful to trans and non-binary people. British Columbia courts are to be commended for the measures they have implemented to create a legal profession and justice system that better respect and affirm the identities of trans and non-binary participants. Requiring parties and lawyers to provide the name, title (e.g., Mr., Ms., Mx.,

¹ Letter from Lambda Legal to The Honorable Charles Grassley and The Honorable Dianne Feinstein, “39 LGBT Groups Oppose Confirmation of Stuart Kyle Duncan”, dated January 17, 2018 (available [online](#)).



Counsel), and pronouns of participants in the proceeding represents incremental but important progress to rendering our justice system and profession more inclusive and respectful.

The Canadian Lawyer Magazine's decision to publish Ms. Farsai's transphobic and inaccurate op-ed had the opposite effect. It caused harm, particularly to trans and non-binary members of our communities. While we appreciate that the op-ed has now been removed, its initial publication raises serious concerns about Canadian Lawyer Magazine's editorial standards and the process through which the decision was made to publish it. These issues call for an explanation and apology from Canadian Lawyer Magazine.

We also wish to extend an invitation to Canadian Lawyer Magazine to work with The 519 to deliver appropriate training to your staff on issues related to the inclusive and respectful treatment of trans and gender-diverse people, as well as to develop a policy on the use of pronouns in your own publication.

We look forward to hearing from you.

Sincerely,

Pam Hrick
Chair, Board of The 519
(she/her/hers)

Paul Jonathan Saguil
Vice-Chair, Board of The 519
(he/him/his)