



# Justice Centre for Constitutional Freedoms

June 8, 2017

Board of Trustees  
Battle River School Division  
5402 – 48A Avenue  
Camrose AB T4V 0L3

Dear Board Members,

**RE: *Legal obligations of Battle River School Division (“BRSD”) concerning the use of the Bible at Cornerstone Christian Academy (“CCA”)***

We have been retained by the Cornerstone Christian Academy of Camrose (the “Society”)<sup>1</sup> to provide advice concerning the above-captioned issue.

BRSD has stated that “any scripture that could be considered offensive to particular individuals should not be read or studied in school.”<sup>2</sup> This statement was purportedly based on the *School Act* and the *Alberta Human Rights Act*.

The Society provides this letter to BRSD to promote further collaboration based on a correct understanding of the relevant legal obligations and rights, including rights under the *Canadian Charter of Rights and Freedoms*.

## **Background Information**

In 2009, BRSD and the Society agreed to include CCA as an “alternative program” pursuant to section 21 of the *School Act* RSA 2000 c. S-3 and section 19 of the *Education Act*, S.A. 2012 c. E.-0.3. This legislation expressly provides for the establishment of an alternative program emphasizing a particular religion.

As stated by Alberta Education in its *Alternative School Handbook*, “[a]lternative programs are about doing things differently and they involve working collaboratively within the vision and mission of a particular program.”<sup>3</sup> From the outset, BRSD agreed that CCA would be based upon, and teach from, the Bible, as shown from the following statements from the *Cornerstone Christian Academy School Vision and Purpose Document*<sup>4</sup>, attached as Schedule A to the Master Agreement between BRSD and the Society:

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<sup>1</sup> CCA was originally started and operated by Cornerstone Christian Academy of Camrose, which is referred to in the Master Agreement as the “Society”. CCA refers to the Christian school in Kingman.

<sup>2</sup> Email from Board Chair, Laurie Skori, May 27, 2017 (enclosed).

<sup>3</sup> [https://education.alberta.ca/media/1626689/alternative\\_programs\\_handbook.pdf](https://education.alberta.ca/media/1626689/alternative_programs_handbook.pdf) at p. 7.

<sup>4</sup> References are taken from *School Vision and Purpose Document* attached to the 2010 Master Agreement (enclosed).

**Vision Statement:** Our students will have a good working knowledge of the Bible as a foundation to their education.

\* \* \*

Cornerstone Christian Academy (CCA) offers a program that integrates faith, life and learning. At its foundation is the Christian Bible, the belief that God is central to our humanity, that Jesus Christ is our personal Saviour and Lord, and God's Holy Spirit is present and at work in the world today. The program is interdenominational and embraces students and staff from a variety of backgrounds and heritages.

\* \* \*

CCA seeks to:

- Integrate knowledge of God, the Bible and its relevance into the approved Alberta curriculum. In the classroom, the incidental and purposeful discussion of Christian morals, beliefs and world views are incorporated into each subject
- Assist staff to stay focussed on God's abundance and the task of Christian Education through regular staff Bible study and prayer
- Focus the student's attention on God by starting each day with brief Bible study and prayer
- Provide opportunities for students to grow in their relation to God and one another through involvement in regularly scheduled bible classes, chapel times, spiritual emphasis retreats and field trips.

\* \* \*

### **Student Development**

CCA seeks to be a caring community committed to developing excellence in all areas of student's lives by:

- Encouraging and teaching a passion for prayer, Bible study, and applying Biblical truth in their lives

\* \* \*

### **Cornerstone Christian Academy Statement of Faith**

We believe:

4. The Old and New Testaments, inerrant as originally given were verbally inspired by God and are a complete revelation of His will for the salvation of men. They constitute the divine and only rule of Christian faith and practice.

\* \* \*

**Cornerstone Christian Academy Study Covenant**

According to the Bible, parents are responsible for the training of their children (Deut. 6: 1 -7. Prov. 22:6; Eph. 6: 1-4). Cornerstone Christian Academy serves as partners in providing an excellent education consistent with biblical truth.

\* \* \*

**Covenant Response Form**

\* \* \*

**For grade 7-12 Students**

...

"I understand that Christian teachers are in partnership with my parents. I will strive to obey them also as they seek to train me according to God's Word."

The Master Agreement between the Society and BRSD, most recently reaffirmed in August 2015 (enclosed), commits BRSD to respecting the implementation of the above principles through the Principal of CCA:

**Whereas**

...

The Board recognizes and supports the commitment of the Society in ensuring the availability of a program of studies for students whose parents desire an educational setting which operates in accordance with the religious beliefs, core values, and educational philosophy of Cornerstone Christian Academy of Camrose and the Society;

\* \* \*

1.1. ... The Board will provide a program of studies in an educational setting which operates in accordance with the School Vision and Purpose.

...

1.1.1 The Principal of the CCA Program will work with the school council and the Board to implement and maintain the School Vision and Purpose.

\* \* \*

6.1 The important and legitimate consultative role of the Society, as outlined in Schedule A, Appendix III, in helping ensure that the integrity and intent of the School Vision and Purpose is maintained is recognized and supported by the Board.

...

6.2. The Board will not attempt to change the essential nature of the CCA program, as set out in the agreed upon School Vision and Purpose as outlined in Schedule A.

On April 24, 2017, the Society and BRSD met to discuss a couple proposed changes to the School Vision and Purpose Document. As described by BRSD Board Chair Laurie Skori in an email to the Society Chair Deanna Margel:

The original request from BRSD requested that you remove the word "quality" and the Corinthians scripture citation from your vision document.<sup>5</sup>

In addition to this, our lawyer indicated that any scripture that could be considered offensive to particular individuals should not be read or studied in school.

The above mentioned items are what is required by the CCA Board to be considered in compliance with with [sic] the School Act and Human Rights Legislation as a member of a public school board.

We have had a great working relationship with the school and the CCA board in the past, and want that to continue. In order for that to continue though, CCA must be in compliance and not risk possible violations of legislation.

With respect, the above statements evidence a misapprehension of the relevant legal obligations and rights. The following is provided in the interests of promoting collaborative discussions in operating CCA pursuant to the Master Agreement and the *CCA School Vision and Purpose Document*.

### **Relevant Legal Obligations and Rights**

The supreme law in Canada is our Constitution, including the *Canadian Charter of Rights and Freedoms*. Relevant to a religious alternative program, the *Charter* both protects the choices of parents for a religious education and requires that government bodies such as the BRSD be neutral concerning religion.

#### Parental Rights to Choose a Religious Education for the Children

The Supreme Court of Canada recently reaffirmed the right of parents, through entities such as the Society, to choose a religious education provided for their children, quoting Article 18(4) of the *International Covenant on Civil and Political Rights* which requires governments to “undertake to have respect for the liberty of parents . . . to ensure the religious and moral education of their children in conformity with their own convictions.”<sup>6</sup> Justice Abella noted “the fact that an essential ingredient of the vitality of a religious community is the ability of its

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<sup>5</sup> The Society has decided to remove the word “quality” from the School Vision and Purpose Document to be attached and incorporated into the Master Agreement. The Society has also decided to remove the footnote scripture references from the Statement of Belief (School Vision and Purpose Document, Appendix I) attached and incorporated into the Master Agreement. Note that the Statement of Belief sets out the CCA’s commitment to the entire Bible as “the final authority for Christian faith and life.”

<sup>6</sup> *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 [Loyola] at para 65.

members to pass on their beliefs to their children, whether through instruction in the home or participation in communal institutions.” She further stated:

Ultimately, measures which undermine the character of lawful religious institutions and disrupt the vitality of religious communities represent a profound interference with religious freedom.<sup>7</sup>

The parents who have chosen to send their children to CCA and who have formed the Society to guide their children’s education in accordance with their beliefs are exercising their *Charter*-protected rights. The provision for Alternative Programs within the *School Act* and *Education Act* gives statutory recognition to this right.<sup>8</sup>

### Duty of Religious Neutrality

In another recent and relevant decision, the Supreme Court of Canada outlined the state duty of neutrality.<sup>9</sup> BRSD must adhere to this duty in regard to CCA as it is implementing a specific government program under section 19 of the *Education Act* and section 21 of the *School Act*.<sup>10</sup>

The Supreme Court has defined state neutrality as neither favouring nor hindering any particular belief. In practice, the decisions and actions of institutions implementing government programs “must not interfere in religion and beliefs”.<sup>11</sup> Further, state actors cannot be hostile to any particular religious groups or have a preference for any particular religious belief.<sup>12</sup> The duty of neutrality is meant to produce a “neutral public space free from coercion, pressure and judgment on the part of public authorities in matters of spirituality”.<sup>13</sup> However, neutrality does not mean the “homogenization of private players” in the neutral public space. Neutrality is meant to preserve and promote multiculturalism and true diversity, not to force every private entity to conform.<sup>14</sup>

BRSD complies with its duty of religious neutrality by permitting alternative programs responsive to the various choices, including religious choices, of parents and private entities.

What BRSD is not permitted to do is to “interfere in religion and beliefs”, including those taught or expressed at CCA pursuant to the choices of parents and the Society. Expressing which beliefs or Biblical texts can be taught is a direct violation of BRSD’s duty of neutrality, contravening the Supreme Court’s specific admonition against “coercion, pressure and judgment on the part of public authorities in matters of spirituality”.

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<sup>7</sup> *Loyola* at para 67.

<sup>8</sup> See *Alternative Program Handbook* at p. 21: “Alternative programs, as programs of choice, are established to meet the specific educational interests or needs of students and their parents.”

<sup>9</sup> *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 [*Saguenay*]

<sup>10</sup> *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 [*Eldridge*] at para 38; *Godbout c. Longueuil (Ville)*, [1997] 3 S.C.R. 844 [*Godbout*] at para 47.

<sup>11</sup> *Saguenay* at para 72.

<sup>12</sup> *Saguenay* at paras 75, 80.

<sup>13</sup> *Saguenay* at para 74.

<sup>14</sup> *Saguenay* at para 74.

As stated by Justice Abella in *Loyola*:

A secular state does not – and cannot – interfere with the beliefs or practices of a religious group unless they conflict with or harm overriding public interests . . . . The pursuit of secular values means respecting the right to hold and manifest different religious beliefs. A secular state respects religious differences, it does not seek to extinguish them.<sup>15</sup>

Does the *School Act* or the *Alberta Human Rights Act* prohibit the expression of beliefs that “could be considered offensive to particular individuals”?

BRSD has apparently received legal advice from its lawyer that reading or studying “any scripture that could be considered offensive to particular individuals” would violate the *School Act* and the *Alberta Human Rights Act*. With respect, this advice is not accurate.

Initially, it must be noted that the *Charter* rights and obligations discussed above are binding on BRSD, and would trump anything in the *School Act* or the *Alberta Human Rights Act* to the contrary.<sup>16</sup>

Rights under the *Charter* are not absolute but are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”<sup>17</sup> The Supreme Court of Canada has held that offensiveness is not sufficient to justify a restriction on expression.<sup>18</sup>

In fact, neither the *School Act* nor the *Alberta Human Rights Act* prohibit expression that “could be considered offensive to particular individuals”.

In a separate email on May 16, 2017, Laurie Skori cited sections 16.1 and 45.1 of the *School Act* as grounding BRSD’s requirement. Section 16.1 is irrelevant, pertaining to the establishment of a voluntary student organization, including a GSA.

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<sup>15</sup> *Loyola* at para 43.

<sup>16</sup> Constitution Act 1982, section 52(1): “The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency of no force or effect.”

<sup>17</sup> *Charter* section 1.

<sup>18</sup> *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 at paras 50, 90: “As explained in *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 968, freedom of expression was guaranteed in the *Charter* ‘so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream’. If the repugnancy or offensiveness of an idea does not exclude it from *Charter* protection under s. 2 (b), it cannot, in itself, be sufficient to justify a limitation on expression under a s. 1 analysis. A blanket prohibition on the communication of repugnant ideas would offend the core of freedom of expression and could not be viewed as a minimal impairment of that right . . . . offensive ideas are not sufficient to ground a justification for infringing on freedom of expression.”

In regard to section 45.1, the Society is committed to maintaining CCA as a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging. The Society is committed to a zero tolerance policy for bullying regardless of a student's personal characteristics.

However, it is incorrect to assert that section 45.1 requires the prohibition of expression that "could be considered offensive to particular individuals". It is one matter to seek to welcome, care for, respect and protect students; it is an entirely different matter altogether to not express any views that a student could consider offensive. Such a prohibition is entirely unrealistic. Nearly anything, and almost everything, could be considered offensive by someone.

In reality, students in every school regularly encounter facts and ideas they may consider offensive, in topics from health class to history class. This is no different than the reality each person experiences on a daily basis.

Ms. Skori also cited section 4 of the *Alberta Human Rights Act*, which prohibits discrimination "because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons." Superficially, one may argue that CCA "discriminates" because it is an alternative program designed to promote a particular religion, Christianity.

However, the *Alberta Human Rights Act* specifically includes a clause that recognizes that the prohibition of "discrimination" is not applicable in all circumstances.<sup>19</sup> Rather, in the context of religious schools, the Supreme Court of Canada has upheld not merely the expression, but the enforcement of religious tenets that apply to personal and intimate matters.<sup>20</sup>

The fact is that public education in Alberta respects diversity. The government of Alberta has specifically provided for the establishment of alternative programs under public school boards. As a result numerous schools operate across Alberta with a particular focus on various religious beliefs, sports, academics, learning philosophies or languages. Each of these schools addresses specific interests and desires that students and parents have.

CCA is a Christian alternative program. The Biblical teachings of Christianity "could be considered offensive to particular individuals" for a variety of reasons. For example, the belief that Jesus is God<sup>21</sup> could be considered offensive to followers of Judaism or Islam. Biblical prohibitions on drunkenness, pornography and sexual promiscuity could likewise be considered offensive by some people.

Alberta Education recognizes that alternative programs will not be appropriate for all students:

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<sup>19</sup> *Alberta Human Rights Act* section 11: "A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances."

<sup>20</sup> See *Caldwell et al. v. Stuart et al.*, [1984] 2 SCR 603.

<sup>21</sup> See *Cornerstone Statement of Faith* paras 1 and 2.

Alternative programs, as programs of choice, are established to meet the specific educational interests or needs of students and their parents. In order to support student success, it is critical that students, their parents and the board look for a match between the specific educational interests or needs of the student and the focus of the alternative program. Not all alternative programs are appropriate for every student.<sup>22</sup>

The educational choice provided by alternative programs is not prohibited discrimination. The CCA program is no different.

### **Conclusion**

BRSD must recognize these principles. Its attempt to prohibit the reading or studying of any scripture that “could be considered offensive to particular individuals” is not only unwarranted and unrealistic, it is contrary to the Master Agreement between BRSD and the Society, where BRSD agreed not to “attempt to change the essential nature of the CCA program” set out in the School Vision and Purpose Document.

BRSD has directly violated the warning of the Supreme Court of Canada not to interfere in religion or beliefs. BRSD is legally obligated to respect the parental choices expressed through the Society, concerning the religious education of their children at CCA.

The operation of CCA as an alternative program emphasizing a particular religion requires collaboration between BRSD and the Society, principally because only the Society can determine the religious nature of the program and BRSD is constitutionally prohibited from doing so. A clear understanding of these principles is essential for continued and effective collaboration to serve the students attending CCA.

Sincerely,



Marty Moore, J.D.  
Justice Centre for Constitutional Freedoms  
Counsel for the Cornerstone Christian Academy of Camrose

Enclosures

cc: Cornerstone Christian Academy of Camrose

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<sup>22</sup> See *Alternative Program Handbook* p. 21.