



Justice Centre  
for Constitutional Freedoms

# Parental Rights are Human Rights: Alberta's Bill 24 violates *Charter* freedoms

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## Summary

It is incumbent on the government of Alberta to only pass laws which conform to the Constitution of Canada, including the *Canadian Charter of Rights and Freedoms*. Bill 24 violates the fundamental freedoms that are protected by sections 2 and 7 of the *Charter*.

The Supreme Court of Canada has long held that religious schools have a right to associate around a common creed, teach in accordance with that creed, and exclude those who are unwilling to comply with the requirements of said creed.<sup>1</sup> Further, the Supreme Court of Canada has held, in regard to section 7 of the *Charter*, that it should be “plain that the right to nurture a child, to care for its development, and to make decisions for it in fundamental matters... are part of the liberty interest of a parent.” The Court has stated that “the common law has long recognized that parents are in the best position to take care of their children and make all the decisions necessary to ensure their well-being.”<sup>2</sup>

Writing for the majority in *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 (*B. R.*), La Forest J. noted that the Courts have shown reluctance to interfere with parental rights, and that state interference is tolerated only in cases of necessity.<sup>3</sup> In regard to a parent’s section 7 right to educate, he stated that “the parental interest in bringing up, nurturing and caring for a child, including medical care and **moral upbringing**, is an individual interest of fundamental importance to our society.”<sup>4</sup>

Bill 24 ignores all of the foregoing law in regard to parental rights. Bill 24 violates the constitutional rights of parents, as well as those of administrators and staff of independent schools, to believe, associate and educate in accordance with constitutionally-protected beliefs and opinions about marriage and sexuality. Further, the government has made no attempt to consult with

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<sup>1</sup> *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 [*Loyola*]; *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 [*TWU v BCCT*].

<sup>2</sup> *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315, 1995 CanLII 115 (SCC) [*B.R.*] at para. 206.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid* [emphasis added].

Alberta parents, including parents whose children attend independent schools, despite many requests.

In addition to its failure to conform to the *Charter*, Bill 24 violates other legislative protections for parents to make decisions respecting all aspects of the education of their children. The education of children, as per s. 21(6)(c) of the *Family Law Act* and Article 18(4) of the *International Covenant on Civil and Political Rights*, includes extracurricular activities and moral education. The *Universal Declaration of Human Rights*, to which Canada is a signatory, also protects the parental right to choose the kind of education given to their children.<sup>5</sup> A school's clubs and other extra-curricular activities have a direct and significant impact on the kind of education that is provided to children. Gay-Straight Alliances (GSAs) are inherently educational because they involve the exploration and discussion of sexual behaviour and sexual identity.

The Alberta Teachers Association<sup>6</sup> (ATA), as well as GSA websites, state that GSAs are not merely informal peer support groups. Rather, GSAs are ideological clubs which espouse particular beliefs about human sexuality and gender. These beliefs are incompatible with, and hostile to, the beliefs and values of many parents, teachers, administrators and schools in Alberta.<sup>7</sup> Parents and independent schools have a constitutional right not to be compelled to adopt the government's beliefs or ideological platform when it conflicts with their own constitutionally-protected beliefs and opinions, and their constitutionally protected freedom of association that is used to create and maintain independent schools.

Lastly, it is reasonably foreseeable that the secrecy created by Bill 24, in relation to withholding information from all parents, will interfere with and severely undermine essential parental involvement in their children's social, intellectual and moral development.

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<sup>5</sup> "Parents have a prior right to choose the kind of education that shall be given to their children." – section 26(3), Universal Declaration of Human Rights.

<sup>6</sup> <https://www.teachers.ab.ca/SiteCollectionDocuments/ATA/Publications/Human-Rights-Issues/PD-80-6%20GSA-QSA%20Guide%202016.pdf>.

<sup>7</sup> "Clubs often work on advocacy, human rights and awareness projects": <https://www.calgarysexualhealth.ca/programs-workshops/gsanetwork/>; "GSAs... work to end homophobia and transphobia": <https://gsanetwork.org/resources/building-your-gsa/what-gsa>.

Section 16.1 of Alberta's *School Act* currently requires schools to establish a GSA upon the request of one or more students. This applies to all schools, including independent schools. Section 45.1 of Alberta's *School Act* requires public schools in Alberta to create a "welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging", and adopt specific policy positions required by the Minister of Education. However, currently section 45.1 does not apply to independent schools (a legislative recognition of the line between government and independent schools for *Charter* purposes), who have therefore enjoyed the freedom to teach principles and beliefs which do not conform to the majoritarian secular narrative on sexuality and gender.<sup>8</sup> Section 50.1 of the *Act* currently requires that parents be informed of the teaching of sexual material (or religious material) at school and provides parents with the ability to "opt out".

Bill 24 would amend each of the foregoing sections to increase government control over independent schools. Bill 24 causes section 45.1 to apply to all schools, not merely those operated by public school boards, and requires private religious schools to create and submit policies that are favourable to LGBTQ ideology.<sup>9</sup> Bill 24 would amend section 16.1 to require the principal to ensure that the release of information about the GSA is limited to the fact that the club exists (not whether a parent's child joins the club), and makes the principal responsible for creating a school environment that is in compliance with LGBTQ ideology.<sup>10</sup> Section 50.1 of the *Act* would be amended to prevent a parent from opting out of their child's participation in a GSA on the basis of its sexual nature.<sup>11</sup>

Finally, Bill 24 imposes new obligations on private schools to behave as though they are government, by requiring private schools to be bound by *Charter* as if they were not private associations. This is contrary to section 32 of the *Charter*, and contrary to multiple decisions of all

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<sup>8</sup> *School Act*, RSA 2000, c S-3, s. 45.1.

<sup>9</sup> Bill 24, s. 7(5), available at [http://www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_29/session\\_3/20170302\\_bill-024.pdf](http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_29/session_3/20170302_bill-024.pdf).

<sup>10</sup> Bill 24, s. 2(d), s. 7(4)(c) s. 4.

<sup>11</sup> Bill 24, s. 9.

levels of courts, in all provinces, and the Supreme Court of Canada.<sup>12</sup> Independent religious schools are private bodies, protected by the *Charter* from oppressive government action. To force an independent religious school to behave like a government agency is to remove its religious purpose and prevent it from carrying out its particular mission. As a private body enjoying *Charter* freedoms, a private school is not subject to the *Charter*. Bill 24 therefore reveals a profound lack of understanding of constitutional law, manifests an intention to not comply with the *Charter*, or both.

## Background

On March 10, 2015, the Progressive Conservative government led by Jim Prentice passed “Bill 10: An Act to Amend the Alberta Bill of Rights to Protect Our Children.” Bill 10 required all schools, including independent and religious schools, to establish a GSA upon the request of one student, and to hold an “activity intended to promote a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging” upon receiving a request from a student.<sup>13</sup>

In January 2016, Alberta Education released a document entitled “Guidelines for Best Practices: Creating Learning Environments that Respect Diverse Sexual Orientations, Gender Identities and Gender Expressions”, and required all schools to submit policies addressing bullying behaviour to the Minister of Education by March 31, 2016. The request for policies relied on section 45.1 of the *School Act*. Pursuant to the government’s request, schools across the province, including private schools, submitted draft policies to the Minister for review. Section 45.1 of the *School Act* however, does not apply to private schools, and thus, the government’s request for private school polices was not legislatively grounded. Further, by October of 2017, 19 months later, the

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<sup>12</sup> See *TWU v BCCT* at para. 25: “It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the *Charter* does not apply.”

<sup>13</sup> For an analysis of Bill 10 see “Mandatory Gay-Straight Alliances versus *Charter* Freedoms: An analysis of Alberta’s Bill 10 in light of the Supreme Court of Canada ruling in *Loyola v Quebec*”, available at <https://www.jccf.ca/wp-content/uploads/2015/04/Mandatory-Gay-Straight-Alliances-versus-Charter-Freedoms-April-2015.pdf>.

Education Minister had still not responded to many of Alberta’s private schools to confirm whether he considered the policies to be acceptable or unacceptable.

A related issue came into being when Alberta Education received a Freedom of Information and Protection of Privacy (FOIP) request to receive copies of all school board policies, in relation to section 16.1 of the *School Act*. Despite the fact that Alberta Education had not responded to the schools concerning their draft policies, in October 2017, the FOIP Branch at Alberta Education reversed its prior position and decided to release the policies. Many school authorities have appealed this decision to the Alberta Privacy Commissioner.

Further to these developments, LGBTQ activist Kris Wells, who has no legal education or training, suggested that privacy legislation prevented parents from being informed concerning their children’s involvement in school clubs such as GSAs, or an “activity.” There is no legal basis for such claim, as privacy legislation does not apply to children vis-à-vis their own parents.<sup>14</sup>

On November 2, 2017, the Minister of Education introduced “Bill 24: An Act to Protect Gay-Straight Alliances.” Bill 24 seeks to make amendments to the provisions of the *School Act* added by Bill 10 in the following notable ways:

- Prohibiting any parental (or other) notification concerning GSAs or an “activity” other than notice of the establishment of a GSA or the holding of an “activity”<sup>15</sup>;
- Applying section 45.1 to private schools, forcing them to “respect diversity”<sup>16</sup>;

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<sup>14</sup> For legal analysis of this claim, see “Protecting Children, Protecting Families: The legal rights of parents to be fully informed on all matters regarding their children’s education”, available at <https://www.jccf.ca/wp-content/uploads/2017/04/2017-04-18-The-parental-right-to-be-informed.pdf>.

<sup>15</sup> See Bill 24, s. 2(d): “Section 16.1 is amended[:] (d) by adding the following after subsection (5): (6) The principal is responsible for ensuring that notification, if any, respecting a voluntary student organization or an activity referred to in subsection (1) is limited to the fact of the establishment of the organization or the holding of the activity”; see also Bill 24, section 9: “For greater certainty, this section [50.1 requiring parental notification where the “subject-matter deals primarily or explicitly with religion or human sexuality”] does not apply with respect to the establishment or operation of a voluntary student organization referred to in section 16.1 or the organizing or holding of an activity referred to in section 16.1.”

<sup>16</sup> See Bill 24, s. 5.

- Amending section 45.1 with specific requirements for school policies and codes of conduct, including a requirement that the policies “include the text of section 16.1(1), (3), (3.1), (4) and (6)”, not conflict with section 16.1, prevent parental notification as described above, and that the policies and codes of conduct be publicly available.<sup>17</sup>

## Legal Analysis

This legal analysis addresses Bill 24’s prohibition of parental notification concerning a GSA or an “activity”, as well as Bill 24’s requirements that Alberta’s numerous faith-based schools be compelled to comply with the *School Act*’s school policies and codes of conduct in relation to GSAs.

### **1. The prohibition of parental notification breaches Canada’s Constitution, international law, and Alberta legislation**

Bill 24 will prohibit parents from being informed about whether their child has joined a GSA club, attended a GSA meeting, or participated in a GSA-related “activity” at school. Practically speaking, this means that parents will never know who has had access to their child; what material of a sexual nature has been presented to their child; whether their child is being indoctrinated into a belief system that the parents consider harmful; who their child is associating with; or what activities their child is participating in. Through GSAs, teachers and other (unknown) adults have access to Alberta’s children (as young as five) without any parental supervision or knowledge.

The right of parents to direct, and to be fully informed about, all aspects of their children’s education is entrenched in international law, provincial law and the Constitution. The prohibition in Bill 24 requiring the withholding of information from parents violates the *Charter*, Canada’s legal obligations under international law, the *Alberta Bill of Rights*, and Alberta’s *Family Law Act*.

The *Universal Declaration of Human Rights*<sup>18</sup> states in Article 26(3):

Parents have a prior right to choose the kind of education that shall be given to their children.

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<sup>17</sup> See Bill 24, s. 7.

<sup>18</sup> G.A. Res. 217 A (III), U.N. Doc. A/810 (1948) [*Universal Declaration*].



Article 16(3) of the *Universal Declaration* also states:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The *International Covenant on Civil and Political Rights*,<sup>19</sup> to which Canada is a signatory, states in Article 18(4):

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure **the religious and moral education of their children in conformity with their own convictions**. [Emphasis added]

As with the *Universal Declaration*, the *International Covenant* states in Article 23(1):

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The Supreme Court of Canada in *Loyola* affirmed that Article 18(4) of the *International Covenant on Civil and Political Rights* is applicable in Canada.<sup>20</sup>

All parents, religious or otherwise, have the constitutional right under section 2(a) of the *Canadian Charter of Rights and Freedoms* to determine all aspects of their children's education, including the moral education of their children. Like all rights, parental rights are subject to reasonable limits. For example, parents do not enjoy a constitutional right to require the public school curriculum to align with the cultural, moral, and religious values they desire to pass down to their children.<sup>21</sup> Rather, the right to determine all aspects of a child's education manifests itself in the right to school choice and the right to be informed.

Alberta legislation recognizes the right of parents to direct their children's education, and also requires that parents be informed about all aspects of their children's education. Section 1 of the *Alberta Bill of Rights* states:

It is hereby recognized and declared that in Alberta there exist without discrimination by reason of race, national origin, colour, religion, sexual orientation, sex, gender identity or gender expression, the following human rights and fundamental freedoms, namely:

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<sup>19</sup> 999 U.N.T.S. 171 [*International Covenant*].

<sup>20</sup> *Loyola* at para 65.

<sup>21</sup> See *L. (S.) c. Des Chênes (Commission scolaire)*, 2012 SCC 7.

...

(g) the right of parents to make informed decisions respecting the education of their children.<sup>22</sup>

Parents cannot make informed decisions concerning their children's education unless they receive accurate, relevant and comprehensive information from teachers and principals. The *Alberta Bill of Rights* is not merely aspirational; all provincial legislation, including the *School Act*, must comply with it. Section 2 of the *Bill of Rights* states:

Every law of Alberta shall, unless it is expressly declared by an Act of the Legislature that it operates notwithstanding the Alberta Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared.

The Alberta *Family Law Act*, in regards to the rights of guardians (including natural parents), states the following:

s. 21(4)(a) ...each guardian is entitled to be informed of and consulted about and to make all significant decisions affecting the child in the exercise of the powers and responsibilities of guardianship....

...

s. 21(6) ...each guardian may exercise the following powers:

(a) to make day-to-day decisions affecting the child, including having the day-to-day care and control of the child and **supervising the child's daily activities**

...

(c) to make decisions about the child's education, including the nature, extent and place of education and any participation in extracurricular school activities

...

(e) to decide with whom the child is to live and **with whom the child is to associate**

...

(i) to receive and respond to any notice that a parent or guardian is entitled or required by law to receive

...

(l) to receive from third parties health, education or other information that may significantly affect the child....<sup>23</sup>

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<sup>22</sup> *Alberta Bill of Rights*, RSA 2000, c A-14, s. 1 [emphasis added].

<sup>23</sup> *Family Law Act*, SA 2003, c F-4.5 [emphasis added].

In regards to the definition of the word “may” used in s. 21(6) of the *Family Law Act*, s. 28 (2)(c) of the Alberta *Interpretation Act*<sup>24</sup> states: “In an enactment, ‘may’ shall be construed as permissive and empowering.”

Consistent with the *International Covenant*, the *Universal Declaration*, the *Charter* and the *Alberta Bill of Rights*, the *Alberta Family Law Act* recognizes that guardians (parents) should be permitted and empowered to make all decisions regarding their children’s education, including extracurricular activities and with whom their child associates, and receive “other information that may significantly affect the child”. The exercise of parental decision-making necessarily requires schools to properly inform parents about all aspects of the child’s education, including the child’s involvement with all extra-curricular clubs and activities.

Bill 24 does not amend the *Family Law Act* to remove these rights from parents, yet its provisions regarding GSAs are in direct conflict with existing law.

As noted above, the Supreme Court of Canada has affirmed the rights of parents to ensure the “moral education of their children in conformity with their own convictions”.<sup>25</sup> This right necessarily requires that parents be fully informed about what is available to their children at school, who is presenting information to their children, and the specific contents of what is taught to their children, whether through the curriculum or through extra-curricular activities. Without being informed about who and what their children are exposed to, the parents’ right to guide their children’s moral education is empty and meaningless.

As with all rights, this legal right of parents to be fully informed about everything their children are involved with at school can only be infringed in cases of clear necessity. For example, in a situation where providing parents with information may result in harm to the child, teachers and principals have discretion to withhold information. Currently, withholding information from parents is the exception. Bill 24 will make it the rule. This violates the *International Covenant*,

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<sup>24</sup> RSA 2000, c I-8.

<sup>25</sup> *Loyola*, at para. 65, quoting Article 18(4) of the *International Covenant*.

which requires that parents be in a position to evaluate the moral education their children will receive through a GSA or “activity”.<sup>26</sup>

Further, Bill 24 directly contradicts the amendments made by Bill 10 to the *Alberta Bill of Rights* declaring “the right of parents to make informed decisions respecting the education of their children” to be a human right and fundamental freedom in Alberta.

### **There is no justification for a general prohibition on informing parents**

In order to lawfully infringe parental rights to be informed concerning their children, the government is required to pass a stringent test:

1. the law infringing the right must be supported by a **pressing and substantial purpose**,
2. the government infringement must be **rationally connected** to that interest,
3. the law must be **minimally impairing**, and
4. the law’s **benefits must outweigh the harm** caused by the law.<sup>27</sup>

The claimed justification for prohibiting parental notification is to protect children from being “outed” to their own parents without the child’s consent. This premise is based on the flawed assumption that schools and the government are better equipped to aid childhood development than parents. This assumption is not supported by the *Charter*, which provides explicit and fundamental protection for the right of parents to educate their own children, and which protects

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<sup>26</sup> An active parent organization in Alberta has noted the following concerning GSAs:

A few minutes spent reading one or more GSA websites makes it clear that GSAs describe themselves as ideological clubs which accept the idea that all forms of consensual sexual expression are legitimate. GSAs do not hold out abstinence from sex as a virtue worth pursuing. GSAs are therefore incompatible with, and hostile to, the teachings of Christianity, Islam, Orthodox Judaism, and other religions, not to mention the individual virtues of many agnostic or atheist families and communities. GSAs also embrace the idea that people (whether opposite-sex attracted or same-sex attracted) are not really capable of, and not fully responsible for exercising, self-control and self-restraint when it comes to consensual sex. Whether or not one agrees with this approach to human sexuality, it is clear that GSAs are based on a belief system (ideology) that not every parent will agree with.

See “Gay Straight Alliances: What Alberta parents should know about Bill 10” available at <https://d3n8a8pro7vhmx.cloudfront.net/parentchoice/pages/66/attachments/original/1497903434/GSAs-What-Alberta-parents-should-know-about-Bill-10.pdf?1497903434>.

<sup>27</sup> See *R v Oakes*, [1986] 1 SCR 103.

the ability of parents to facilitate their children's moral education. Government may interfere with these rights only where necessary in exceptional scenarios.

Further, there are many other related reasons why prohibiting parental notice regarding their children's activity is unlawful. First, a school is the agent of parents. Parents are the legal guardians of children, not schools. Parents are the ones ultimately responsible for the education of their children, not schools. Parents have the right and the responsibility to make decisions in regard to the education of their children, and parents are entitled to all relevant information to exercise the rights and fulfill the responsibilities at hand. Parents place their children with the school on the express condition that their agent (the school) keep them apprised of developments with their children in regard to scholastic, social and moral development. If passed, Bill 24 would unlawfully interfere with this agency relationship.

Second, preventing parents from being informed as to their child's attendance at a GSA (a club where sexual information, sometimes of a graphic nature, will be presented or discussed) or "activity" is to remove parents from a key developmental component of their children's progress toward adulthood. Bill 24 proceeds from the false assumption that parental input into their own children's education is undesirable in regard to sexual development. This removes parents from their position of being responsible for the appropriate moral, emotional and psychological development of their children as they mature physically towards adulthood, and instead turns the school and the government into children's primary caregivers. Bill 24 fundamentally ignores the law of guardianship, and effectively pits schools, the government and students against parents.

Third, attending a GSA or related "activity" does not identify a student gay or straight, or otherwise. Such clubs, and presumably any related "activity", are open to all students, regardless of sexual orientation or gender identity. Preventing parents from knowing if their children are attending a GSA has the effect of preventing valuable conversations that should take place between parents and children in regard to sexuality, morality and other important topics. It is the right and the obligation of parents to have these conversations with their children, and harmful to children when government actively works to prevent such conversations from occurring by making it illegal for teachers and principals to share information with parents. Absent extreme circumstances, where the teacher or principal has reasonable grounds to believe that withholding information from

parents is necessary to protect the child, the governing law should remain what it is now: to inform parents.

Fourth, in those comparatively rare circumstances where there are legitimate concerns of harm or abuse, teachers are already permitted not to inform parents. Frontline educators regularly exercise their discretion as to how to appropriately keep parents informed concerning their children on all issues. Where concerns do arise, those issues are addressed on a case-by-case basis, with appropriate support from school and community resources, including as appropriate, school counselors, school administrators, social services and police. Further, teachers are well-situated to exercise discretion and good judgment in relation to the differences between older and younger children on a case-by-case basis.

For the reasons set out above, a law universally barring *all* parents from being informed concerning their child's involvement in a GSA or "activity" does not serve a **pressing and substantial purpose**.

Preventing all parents from ever knowing if their child is involved with a GSA or "activity" is certainly not **minimally impairing** of parental rights. The vast majority of parents are caring and supportive, and love their children unconditionally. Bill 24 violates the rights of *all* parents based on concerns about only *a very small number* of parents. Apart from Bill 24, existing law already provides teachers and principals with the tools and resources to deal with the very small number of cases where parents are actually abusive. Bill 24 ignores the expertise and experienced discretion of frontline teachers and school staff who currently address concerns over notifying parents on a case-by-case basis.

Finally, and of import, the **benefits** of prohibiting parental notification must be balanced against the **harm** caused by barring all parents from being informed concerning the information (sexual, ideological, or otherwise) that their child is exposed to by attending a GSA or "activity". The benefits of such a bar are minimal, given the current ability of teachers and others to appropriately respond to concerns on a case-by-case basis. Further, considering the nature and ideology of GSAs (as explained on GSA websites), if sexual abuse or sexual manipulation took place in the context of a GSA club or activity, parents would not be informed of harm suffered by their own children, under the Bill 24 blanket ban on withholding information from all parents. If a student is suffering

bullying or sexual exploitation within the GSA, not only would parents have no idea that their child was in such a club, it would be illegal for the school to inform the parents of the child's involvement in such a club.

Thus there is a grave risk of substantial harm that will result from the prohibition on parental notification. Parents will be disconnected from, and barred from, involvement in a GSA or "activity". Despite the fact that parental involvement is recognized as a key factor in children's success, the prohibition will preclude that involvement. Further, the relationship between school staff and parents, designed to function collaboratively, will be infused with an adversarial veneer, with legislated secrecy and suspicion of parents.

As the Supreme Court of Canada stated in 1950:

In determining welfare, we must keep in mind what Bowen, L.J., in the case of *In re Agar-Ellis*, (1883) 24 Ch.D. 317, as quoted by Scrutton, L.J. in *In. re J.M. Carroll*, [1931] 1 K.B. 317 at 334, he states: "... it must be the benefit to the infant having regard to the natural law which points out that the father knows far better as a rule what is good for his children than a Court of Justice can."<sup>28</sup>

According to the Alberta Court of Appeal in a 2006 case, it is not the state's role to determine what is best for a child.<sup>29</sup> In that case, the Court said that, without an issue of "fitness" to a parent arising under the law in a specific instance, parents are presumed to know what is best for a child, not government.<sup>30</sup> Otherwise, warned the Court, "there is a very real risk that only the fittest of the fit in our society would be permitted to parent." The Court declared: "That cannot be."<sup>31</sup>

In *AC v Manitoba*,<sup>32</sup> the Supreme Court of Canada explained that "Parental rights (and obligations) clearly do exist and they do not wholly disappear until the age of majority. The Court said that the modern law is that "the Courts will exercise increasing restraint in that regard as a child grows to and through adolescence."<sup>33</sup> The law expects the same respect from parents for the decisions of

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<sup>28</sup> *Re: Baby-Duffell Martin v. Duffell*, [1950] SCR 737, 747, per Rand J.

<sup>29</sup> *W(KV) v Alberta*, 2006 ABCA 404 [W(KV)].

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, at para 35.

<sup>32</sup> [2009] 2 SCR 181

<sup>33</sup> *Ibid.*, at para 58.

their children. In the absence of evidence that parents are actually unfit, there has never been a precedent from any court that parents should generally be excluded from the decision-making process in regard to their own children.

Despite the entrenched legal recognition of the right of parents to be fully informed about, and to direct, the moral education of their children, Bill 24's proposed prohibition on parental notification will provide for secret and unrestricted moral and sexual instruction of children via GSAs and activities. Such direct harm to a fundamental right recognized by international, Constitutional and provincial law is not outweighed by any minimal potential benefit of the prohibition on parental notification.

## **2. The protection of children's rights requires the informed involvement of parents**

While it is claimed that Bill 24's prohibition on parental notification is necessary to protect children's rights, the law recognizes that parental notification and involvement is in fact necessary to protect children's rights.

For example, the Newfoundland Unified Family Court (NUFC) has interpreted a child's section 7 *Charter* rights to include the right to have the protection of parents, and the right to have parents make decisions for the well-being of the child.<sup>34</sup> Further, the NUFC found that the child's section 7 *Charter* rights are violated when the state does not properly inform and notify parents, thereby preventing parents from discharging their obligation to make decisions for, and care for, the child.<sup>35</sup>

The Supreme Court of Canada has acknowledged the fact that children develop and mature gradually, and therefore gradually acquire the same rights as independent adults. As children gradually develop so as to acquire the maturity and understanding necessary to the formation of intelligent and wise decisions, parents gradually lose the legal authority to make decisions for their child.<sup>36</sup> The right of parents to be fully informed about their children when their children attend school, and the right to know every aspect of their child's education (both curricular and extra-

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<sup>34</sup> *L. Re*, 70 Nfld. & P.E.I.R. 287, 1988 CarswellNfld 77 [*L. Re*], at para 77-78.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Manitoba (Director of Child & Family Services) v C (A)*, 2009 SCC 30 [*Manitoba v CA*] at para 50-51.



curricular) will decrease with time as the child moves towards the legal age of adulthood. However, the Supreme Court found that research has shown that children and even adolescents typically lack the psychological development required to make truly good decisions, and are easily influenced.<sup>37</sup>

A child has no right to make significant decisions affecting their life until the child has sufficient decision-making capacity.<sup>38</sup> In the context of health care decisions, the Supreme Court has found that children under the age of 16 years do not have the right to unilaterally make a decision that will, in the opinion of the court, cause harm. Further, parents retain at least some legal authority to make decisions for their children until the age of 18 years.<sup>39</sup>

The withholding of information from parents has been justified with the mistaken assumption that children have privacy rights as against their own parents, and that these privacy rights legally entitle children to require other adults, such as teachers and school administrators, to purposely withhold important information from their parents. The law recognizes no privacy rights of children vis-à-vis their own parents.

Children only have privacy rights as against the government and third parties, not vis-à-vis their own parents. In fact, as detailed above, the law requires schools to inform and notify parents regarding the moral education of their children, which includes the extracurricular activities their children participate in. By virtue of both the parental right to decide all matters respecting a child's education, as well as the child's lack of decision-making capacity, children under the age of 16 have no legal right to demand that the school not inform their parents about their participation in a GSA or "activity". Even at or above the age of 16, whether a school can withhold information from parents on request from their child in regards to their involvement with a GSA or "activity" must be appropriately considered on a case-by-case basis.

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<sup>37</sup> *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, at para 72; *Manitoba v CA*, at para 70-79.

<sup>38</sup> *Ibid*, at para 46.

<sup>39</sup> *Ibid*, at para 51.

### 3. Bill 24's requirements for school policies violate the religious beliefs of some schools

Section 45.1 of the *School Act* has no current operation in regard to private schools. This avoids conflict between the religious beliefs of the school and parents, and the secular or progressive ideology now favoured by government. Requiring private schools to comply with section 45.1 will bring religious schools and parents of children at these schools into direct conflict with the state in regard to *Charter* section 2(a) freedom of religion. Further, Bill 24 purports to compel all private schools to conform to the government's obligations under the *Charter*. The *Charter* itself (section 32) states that only government is bound by the *Charter*. In contrast, private schools are protected by the *Charter*, meaning protected from government, meaning that private schools can exercise their freedoms of expression, religion and association, and that private schools can use the *Charter* to defend themselves against government action. Bill 24 is not only an absurd and obtuse misinterpretation of constitutional obligations, it is also a direct attack on the fundamental freedoms of parents and private school educators enshrined in section 2 of the *Charter*.

Section 16.1 of the *School Act*, and the proposed additions to section 16.1 in Bill 24, require that schools support the establishment of a "gay-straight alliance" or "queer-straight alliance", and that "the principal shall not prohibit or discourage students from choosing a name that includes 'gay-straight alliance' or 'queer-straight alliance'". As outlined in "Mandatory Gay-Straight Alliances versus *Charter* freedoms,"<sup>40</sup> section 16.1 of the *School Act* violates *Charter* section 2(a).

Bill 24 imposes the requirements of section 45.1 on all government-funded schools in Alberta, including private schools which receive partial government funding for their operations. Further, Bill 24 imposes very specific requirements on schools to create policy that includes the actual text of section 16.1(1), (3), (3.1), (4) and (6) and "must not contain provisions that conflict with or are inconsistent with this section, or section 16.1".<sup>41</sup>

For the government to require schools to parrot the law as though it were their own expression violates free expression as protected by section 2(b) of the *Charter*. Schools are required to abide

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<sup>40</sup> <https://www.jccf.ca/wp-content/uploads/2015/04/Mandatory-Gay-Straight-Alliances-versus-Charter-Freedoms-April-2015.pdf>

<sup>41</sup> See Bill 24, s. 7.

by the law; they are not required to express agreement with the law, and the latter is contrary to the *Charter*. In light of the religious and conscientious objections some schools have to terminology in the text of section 16.1, the compelled expression of the verbatim text of section 16.1 is an infringement both of freedom of conscience and religion as guaranteed by section 2(a) of the *Charter*, and freedom of thought, belief, opinion and expression guaranteed by section 2(b) of the *Charter*.

Further, some faith-based schools have religious beliefs that preclude them from affirming group identities based on sexuality and gender, such as “gay”, “queer”, “straight”, “trans”. These beliefs, the expression of these beliefs, and the exercise of freedom of association in relation to these beliefs, are constitutionally protected.

Many Christian schools, for example, believe that emphasizing, or focusing on, particular group identities (i.e. gender, race, culture, religion, sexual orientation, gender expression, etc.) violates the biblical imperative for Christians to find their identity in Christ, and the principle that Christians are united in their faith and not in factors like race, ethnicity or gender. These beliefs are based on verses such as Galatians 3:27-28, which states:

For as many of you as were baptized into Christ have put on Christ. There is neither Jew nor Greek, there is neither slave nor free, there is no male and female, for you are all one in Christ Jesus.<sup>42</sup>

It is no secret that Islam, Orthodox Judaism, and other religious faiths will also have their own particular religious objections to the terminology and ideology of a “gay-straight alliance.”

The Alberta government has not pointed to any reason, or any evidence, to suggest that Alberta’s schools were not already fully committed to eliminating all forms of bullying, regardless of a student’s group identity, prior to the passing of Bill 10, or now prior to the passing of Bill 24. Alberta’s schools were and are also committed to ensuring the physical safety and social connectedness of all their students, regardless of the student’s group identity.

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<sup>42</sup> English Standard Version.

The Supreme Court of Canada’s decision in *Loyola High School v Quebec (Attorney General)* is instructive as to how government must accommodate religious schools when their religious beliefs conflict with government requirements. The Court stated:

In order to respect values of religious freedom in this context, as well as to cohere with the larger regulatory scheme, a reasonable interpretation of the process for granting exemptions from the mandatory curriculum would leave at least some room for the religious character of those schools. The regulation providing for such exemptions would otherwise operate to prevent what the *Act respecting private education* itself allows — a private school being denominational.<sup>43</sup>

GSAAs seek to recognize, affirm and even promote sexual practices that are incompatible with the religious beliefs of many religious denominations, including (with some exceptions) Christians, Muslims, Jews, and other faiths.<sup>44</sup> To force GSAAs on religious schools that object to them on religious grounds does not leave any room for the “religious character of those schools.” The Court in *Loyola* recognized and protected the right to religious freedom, and its particularly important application in the context of religious schools.<sup>45</sup>

Further, requiring objecting religious schools to include provisions in their own policies promoting a “gay-straight alliance” does not respect the religious character of schools, as required by the Court in *Loyola*. A religious school is a private association defined by its policies and practices. For it to be required to express support for concepts and practices that violate its own religious beliefs is a severe infringement of the religious schools’ character.

Lastly, Bill 24’s inclusion of a possible exemption for religious schools from the onerous requirements of the new section 45.1 is misleading.<sup>46</sup> First, section 45.1 of the *Act* cannot constitutionally be extended to independent schools, so the promise of an exemption to mitigate

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<sup>43</sup> *Loyola*, at para 55.

<sup>44</sup> See “Gay Straight Alliances: What Alberta parents should know about Bill 10”, available at <https://d3n8a8pro7vhmx.cloudfront.net/parentchoice/pages/66/attachments/original/1497903434/GSAs-What-Alberta-parents-should-know-about-Bill-10.pdf?1497903434>.

<sup>45</sup> For a fuller analysis of this point see “Mandatory Gay-Straight Alliances versus *Charter* Freedoms: An analysis of Alberta’s Bill 10 in light of the Supreme Court of Canada ruling in *Loyola v Quebec*”, available at <https://www.jccf.ca/wp-content/uploads/2015/04/Mandatory-Gay-Straight-Alliances-versus-Charter-Freedoms-April-2015.pdf>.

<sup>46</sup> Bill 24, s. 8: “45.2 The Lieutenant Governor in Council may exempt an accredited private school or a class of accredited private schools from the operation of all or part of section 45.1.”

the disregard of constitutional freedoms is meaningless. Second, the government of Alberta should pass just laws, not pass unjust laws and then promise to exempt certain parties. If a law is just, it is just for all, and no exemption is required. Third, Minister Eggen emailed the school boards on November 2, 2017 to indicate any exemption may be limited to schools “that are largely not publicly funded due to the age of the learner or where they have chosen to opt out of education program accountability requirements.” Courts, however, are unlikely to take such a narrow view in granting religious schools exemptions from government requirements that violate their religious beliefs. In *Loyola*, the Supreme Court was unanimous in holding that the Quebec government had failed to grant Loyola High School a reasonable exemption to accommodate its religious beliefs.

## **Conclusion**

The Supreme Court of Canada has ruled that government may not interfere with parental rights to make all decisions for their children, including children between ages 13 and 18, unless the government first proves that the parents’ decisions are harmful to the child, or that the child is a mature minor and has made a fully informed decision contrary to parental views. This proof must take place in a court of law, upon notice to the parent. The infringement of parental rights is justified only on a case-by-case basis, not by laws which remove rights from all parents. Schools and teachers are not judges, and the contention that they must, by law, withhold information from all parents without exception is contrary to the Constitution, contrary to Canada’s legal obligations under international law, and contrary to other Alberta legislation such as the *Family Law Act*.

Section 7 of the *Charter* only permits interference with a parent’s role after due process, in accordance with the principles of fundamental justice. Section 2 of the *Charter* protects a parent’s right to educate based on parents’ own conscience and religious beliefs.

The prohibition on parental notification concerning a GSA or “activity” violates the fundamental right of parents to be informed concerning their children’s education. Further, there is no real benefit to be realized from the prohibition, since the few children whose parents may in fact pose a risk to them can continue to be protected on a case-by-case basis and can be assured, in those cases, that their parents will not be notified. Lastly, it is foreseeable that GSAs could become the

perfect cover for abuse, bullying and exploitation, not because such clubs are necessarily worse than others, but simply because parents are not kept apprised of their children's involvement in such clubs.

Bill 24 also evidences the government's intention to control and change the character of private schools. The government ignores the exercise of parental rights in education, through the choices of parents to opt out of the public schools and enrol their children in schools consistent with their beliefs, religious and conscientious. Bill 24 instead compels private schools to adopt policy positions in support of the government's preferred LGBTQ ideology. This requirement violates parents' and private schools' fundamental freedoms of conscience and religion, thought, belief, opinion and expression, and association, guaranteed under section 2 of the *Charter*.

Bill 24 is therefore unconstitutional, as both its purpose and effect is to deny the rights of parents under section 7 and section 2 of the *Charter*, and to do so without the requisite justification.