

COURT FILE NUMBER

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COURT

COURT OF QUEEN'S BENCH  
OF ALBERTA

JUDICIAL CENTRE

APPLICANTS

P.T., D.T., F.R., K.R., J.V., A.S., P.H., M.T.,  
UNIVERSAL EDUCATION INSTITUTE OF CANADA,  
HEADWAY SCHOOL SOCIETY OF ALBERTA, THE  
CANADIAN REFORMED SCHOOL SOCIETY OF  
CALGARY, GOBIND MARG CHARITABLE TRUST  
FOUNDATION, CONGREGATION HOUSE OF JACOB -  
MIKVEH ISRAEL, KHALSA SCHOOL CALGARY  
EDUCATION FOUNDATION, CENTRAL ALBERTA  
CHRISTIAN HIGH SCHOOL SOCIETY, SADDLE LAKE  
INDIAN FULL GOSPEL MISSION, ST. MATTHEW  
EVANGELICAL LUTHERAN CHURCH OF STONY  
PLAIN, ALBERTA, CALVIN CHRISTIAN SCHOOL  
SOCIETY, CANADIAN REFORMED SCHOOL SOCIETY  
OF EDMONTON, COALDALE CANADIAN REFORMED  
SCHOOL SOCIETY, AIRDRIE KOINONIA CHRISTIAN  
SCHOOL SOCIETY, DESTINY CHRISTIAN SCHOOL  
SOCIETY, KOINONIA CHRISTIAN SCHOOL - RED  
DEER SOCIETY, COVENANT CANADIAN REFORMED  
SCHOOL SOCIETY, LACOMBE CHRISTIAN SCHOOL  
SOCIETY, PROVIDENCE CHRISTIAN SCHOOL  
SOCIETY, LIVING WATERS CHRISTIAN ACADEMY,  
NEWELL CHRISTIAN SCHOOL SOCIETY, SLAVE  
LAKE KOINONIA CHRISTIAN SCHOOL, PONOKA  
CHRISTIAN SCHOOL SOCIETY, YELLOWHEAD  
KOINONIA CHRISTIAN SCHOOL SOCIETY, THE  
RIMBEY CHRISTIAN SCHOOL SOCIETY,  
LIGHTHOUSE CHRISTIAN SCHOOL SOCIETY,  
PARENTS FOR CHOICE IN EDUCATION, and  
ASSOCIATION OF CHRISTIAN SCHOOLS  
INTERNATIONAL - WESTERN CANADA,

RESPONDENT

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

DOCUMENT

**ORIGINATING APPLICATION**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**Justice Centre for Constitutional Freedoms**  
#253, 7620 Elbow Drive SW  
Calgary, AB, T2V 1K2  
Attention: J. CAMERON and M. MOORE  
Telephone: 403-909-3404  
Facsimile: 587-747-5310

## NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	April 26, 2018, or such time thereafter as determined.
Time:	10:00 AM
Where:	Law Courts,
Before:	Justice in Special Chambers

Go to the end of this document to see what you can do and when you must do it.

### **Remedy sought:**

1. The Applicants apply to this Honourable Court for the following:
  - a. An Order abridging the time for service of this Originating Application and supporting materials, if necessary;
  - b. An interlocutory injunction staying the operation of the following sections of the *Alberta School Act* pending determination of their constitutionality by this Honourable Court:
    - i. Section 16.1(1)(a);
    - ii. Section 16.1(3.1);
    - iii. Section 16.1(6);
    - iv. Section 28(8) and (9);
    - v. Section 45.1(3) - (10), inclusive;
    - vi. Section 45.3 and;
    - vii. Section 50.1(4) (collectively the “Impugned Sections”);
  - c. A declaration pursuant to section 52(1) of *The Constitution Act, 1982*, that each of the individual aforementioned sections, comprising the Impugned Sections, unjustifiably infringe the Applicants’ section 2(a), 2(b) and 2(d) rights under the

*Canadian Charter of Rights and Freedoms* (the “*Charter*”), and are of no force or effect;

- d. A declaration pursuant to section 52(1) of *The Constitution Act, 1982*, that sections 16.1(6), 45.1(4)(c)(i) and s. 50.1(4) of the *School Act* infringe the section 7 *Charter* rights of the Applicant parents (the “*Parents*”), and are of no force or effect;
- e. A declaration that section 45.1(3) of the *School Act* infringes section 32 of the *Charter*, and is of no force or effect;
- f. Further, or in the alternative, a declaration that section 45.1(3) is *ultra vires* the authority of the Alberta Legislature, and is of no force or effect;
- g. A declaration that the Impugned Sections infringe sections 1(b)(c)(d) and (g) of the *Alberta Bill of Rights*;
- h. A declaration that sections 16.1(6) and 50.1(4) infringe sections 24 through 26 of the *Alberta Family Law Act*;
- i. Leave to amend this Originating Application, if necessary;
- j. Costs; and
- k. Such further and other relief as this Court deems just and equitable.

### **Grounds of Application**

#### *The Applicant Parents*

2. Children are often exploited, both sexually and emotionally, by adults or by their own peers, often with tragic, lifelong and irreparable consequences. The abuse and exploitation of children occurs most often in places, and during times, when parents are absent and unaware. The absence of parental knowledge opens the door to predation.
3. The Parents are alarmed and frightened at the climate of secrecy that the *School Act* has created around ideological sexual clubs and related activities. The Impugned Sections of the *School Act* have stripped parents of the ability to know fully where their children are, who they are involved with, and what they may be encouraged to think or do. Children have a right to be protected and supported by their own parents, by way of the Parents’ constitutional right to parent, counsel and protect, and come to the aid of children who may have been pressured, coerced or compelled, either emotionally or sexually, against their

wills. The Impugned Sections prevent the exercise of these basic human and constitutional rights.

4. The Parents have children who attend public, Catholic and independent schools (the “Independent Schools”) in the province of Alberta. Each of the Parents exercises the basic constitutional right of having primary responsibility for their children’s education and development, including in regard to morality and sexuality. Variations of this right are guaranteed by the *Charter*, the *Alberta Bill of Rights*, the *Universal Declaration of Human Rights*, the *Alberta Family Law Act*, and the *International Covenant on Civil and Political Rights*.
5. In order to protect and support their children, the Parents require accountability from schools as to their children’s whereabouts, safety, and activities, as an inherent part of their lawful parental responsibilities. Neither the Parents who are Applicants, nor any other responsible parent, would entrust their children to the care of a daycare, hospital, athletic or dance club that created a place or time of secrecy from which parents were precluded from knowing what transpired with their children in that secret time and place. Yet the Impugned Sections have created such a secret space in every school in the province, thereby threatening the safety of every school age child in Alberta.
6. Two of the Parents, P.T. and D.T., have an autistic teenage daughter who suffered severe psychological and emotional harm when, for a period of over a year, public school officials intentionally withheld information from P.T. and D.T. that their developmentally challenged daughter had been attending the school’s GSA. At the GSA, at the urging of her peers and teachers, P.T. and D.T.’s vulnerable daughter had been convinced to dress as, and pretend to be, a boy at school, but in the evening “change” back into a girl when she went home in the evening. P.T. and D.T.’s child became suicidal before her parents learned of the confusing influences at school. The Impugned Provisions threaten P.T. and D.T.’s continued knowledge of their still-vulnerable child’s activities and surrounding influences at school, and compromise her safety.
7. The Applicants, F.R. and R.T. are parents of four children who attend public schools operated pursuant to the terms of the *School Act*.

8. The Applicant, P.H. is a parent whose child attends a Roman Catholic separate school operated pursuant to the terms of the *School Act*.
9. The Applicant, M.T. is a parent whose children attend Coaldale Christian School operated pursuant to the terms of the *School Act*.
10. The Applicant, J.V. is a parent whose children attend Calvin Christian School operated pursuant to the terms of the *School Act*.
11. The Applicant, A.S. is a parent with a child attending a public school operated pursuant to the *School Act*, and a child attending a Lighthouse Christian Academy operated pursuant to the terms of the *School Act*.

*The Applicant Independent Schools*

12. The Applicant Independent Schools (“Independent Schools”) were each established for the purpose of providing students with an education consistent with the religious beliefs of their respective denominations and faiths. They are registered and approved “accredited private schools” further to section 28 of the *School Act*.
13. The Applicant, Universal Education Institute of Canada, operates an independent school in Edmonton, Alberta, pursuant to the terms of the *School Act*.
14. The Applicant, Headway School Society of Alberta, operates an independent school in Edmonton, Alberta, pursuant to the terms of the *School Act*.
15. The Applicant, The Canadian Reformed School Society of Calgary, operates an independent school near Calgary, Alberta, pursuant to the terms of the *School Act*.
16. The Applicant, Gobind Marg Charitable Trust Foundation, operates an independent school in Calgary, Alberta, pursuant to the terms of the *School Act*.
17. The Applicant, Congregation House of Jacob – Mikveh Israel, operates an independent school in Calgary, Alberta, pursuant to the terms of the *School Act*.
18. The Applicant, Khalsa School Calgary Education Foundation, operates an independent school in Calgary, Alberta, pursuant to the terms of the *School Act*.

19. The Applicant, Central Alberta Christian High School Society, operates an independent school in Lacombe, Alberta, pursuant to the terms of the *School Act*.
20. The Applicant, Saddle Lake Indian Full Gospel Mission, operates an independent school on the Saddle Lake Cree Nation, pursuant to the terms of the *School Act*.
21. The Applicant, St. Matthew Evangelical Lutheran Church of Stony Plain, Alberta, operates an independent school in Stony Plain, Alberta, pursuant to the terms of the *School Act*.
22. The Applicant, Canadian Reformed School Society of Edmonton, operates an independent school in Edmonton, Alberta, pursuant to the terms of the *School Act*.
23. The Applicant, Coaldale Canadian Reformed School Society, operates an independent school in Coaldale, Alberta, pursuant to the terms of the *School Act*.
24. The Applicant, Airdrie Koinonia Christian School Society, operates an independent school in Airdrie, Alberta, pursuant to the terms of the *School Act*.
25. The Applicant, Destiny Christian School Society, operates an independent school in Red Deer, Alberta, pursuant to the terms of the *School Act*.
26. The Applicant, Koinonia Christian School – Red Deer Society, operates an independent school in Red Deer, Alberta, pursuant to the terms of the *School Act*.
27. The Applicant, Covenant Canadian Reformed School Society, operates an independent school near Neerlandia, Alberta, pursuant to the terms of the *School Act*.
28. The Applicant, Lacombe Christian School Society, operates an independent school in Lacombe, Alberta, pursuant to the terms of the *School Act*.
29. The Applicant, Providence Christian School Society, operates an independent school in Airdrie, Alberta, pursuant to the terms of the *School Act*.
30. The Applicant, Living Waters Christian Academy, operates an independent school in Spruce Grove, Alberta, pursuant to the terms of the *School Act*.

31. The Applicant, Newell Christian School Society, operates an independent school in Brooks, Alberta, pursuant to the terms of the *School Act*.
32. The Applicant, Slave Lake Koinonia Christian School Society, operates an independent school in Slave Lake, Alberta, pursuant to the terms of the *School Act*.
33. The Applicant, Ponoka Christian School Society, operates an independent school in Ponoka, Alberta, pursuant to the terms of the *School Act*.
34. The Applicant, Yellowhead Koinonia Christian School Society, operates an independent school in Edson, Alberta, pursuant to the terms of the *School Act*.
35. The Applicant, The Rimbey Christian School Society, operates an independent school in Rimbey, Alberta, pursuant to the terms of the *School Act*.
36. The Applicant, Lighthouse Christian School Society, operates an independent school in Sylvan Lake, Alberta, pursuant to the terms of the *School Act*.
37. The Independent Schools each hold the following foundational Beliefs in common:
  - a. That people are created as male and female, and that God intends for people to accept their gender;
  - b. That individuals cannot truly or actually change their gender or sex;
  - c. That marriage is the union of one man and one woman, for life, to the exclusion of all others, and so instituted by God;
  - d. That sexual relations are intended only for within marriage;
  - e. That departure from the above principles of God's expressed will is morally wrong (collectively, the "Beliefs").
12. The Applicant, Parents for Choice in Education ("PCE"), is a non-profit corporation registered in Alberta, and was established to advance the following objectives:
  - To advocate for an excellent, high-quality education system that is driven and governed by parental choice;

- To advocate for provincial legislation and local school board policies which recognize that parents have a prior right to choose the kind of education that shall be given to their children; and,
  - To advocate for provincial legislation and for local school board policies which preserve, enhance, facilitate, and enable parental choice in education.
13. The Applicant, Association of Christian Schools International – Western Canada (“ACSI”) is registered in Canada as a Non-Profit Corporation and as an Extra-Provincial Non-Profit Corporation in Alberta. The Objects of the Corporation as stated in the NFP Act are:
- To advance the cause of education in all its phases, and in particular, the cause of fundamental Christian education
  - To promote comprehensive liaison amongst school administrators and teachers for instruction and development in all aspects of education.

38. Both PCE and ACSI are committed to ensuring the protection of parental rights in education, including the right to believe, teach and form associations based on the Beliefs.

*Fundamental Charter Freedoms*

39. Section 7 of the *Charter* constitutionalizes the right of parents to protect, support and educate their children.
40. Section 2(a) of the *Charter* protects freedom of conscience and religion. Section 2(b) of the *Charter* protects the freedoms of thought, belief, opinion and expression of schools and parents. Section 2(d) of the *Charter* protects the right to associate freely, both of schools and parents. The freedoms enshrined in section 2 of the *Charter* are alone termed “fundamental” in the Constitution.
41. Freedom of conscience and religion means that Canadians are free to maintain the beliefs of their choosing, and to manifest and practice those beliefs in their daily lives, including in the raising and education of their own children.
42. Freedom of thought, belief, opinion and expression means the right to hold beliefs and opinions, to express them, and to openly teach and share them, without penalty or adverse consequence from government. Freedom of expression includes the right not to be compelled or coerced by government to express something against one’s will.



43. Freedom of association guarantees the right of citizens to associate around common beliefs and goals in a community, including for the purpose of teaching and education of one's children.
44. A corollary of these fundamental freedoms is the principle of state neutrality and the requirement that the state must not encourage or discourage any religious, anti-religious or non-religious belief, conviction or practice.

#### **Alberta Legislature Subject to Constitution**

45. Canadian governments, including the Alberta government, are subject to the Constitution, including the *Charter*. Elected officials, including the Minister of Education, are individuals who, for the temporary term of their office, are bestowed with limited authority to enact laws within their legislative jurisdiction. Such laws must comply with and conform to the Constitution and to the *Alberta Bill of Rights*. Laws which conflict with the Constitution are of no force or effect to the extent of the conflict, pursuant to section 52(1) of *The Constitution Act, 1982*.

#### **Bill 24, An Act to Support Gay-Straight Alliances (“Bill 24”)**

46. Bill 24 was introduced in the Alberta legislature on November 2, 2017, and received Royal Assent on December 15, 2017. Bill 24 amended the *School Act* to restrict the exercise of the constitutional rights of parents and educators by requiring a blanket of secrecy over certain student organizations and activities. The effect of the Bill 24 amendments is the jeopardizing of student safety, the infringement of parental rights in the security of their children, and the restriction of constitutional rights to educate on morality, sexuality (including gender) and marriage in accordance with religious beliefs.
47. Specifically, Bill 24 amended the *School Act* to:
  - a. require the principal, upon a student request for a club “intended to promote a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging” to bypass the authority of the school board, the foundational beliefs of the school, and the rights of parents, and “immediately” establish the requested club – **section 16.1(1)(a)**;

- b. require the principal to allow a requested club to be called a “gay-straight alliance” (“GSA”) or a “queer-straight alliance” (“QSA”) regardless of parental concerns and regardless of the school’s beliefs, culture and character – **section 16.1(3.1)**;
- c. require the principal to prevent any notification of parents and others about a section 16.1 club or activity (other than the mere establishment of the club or holding of an activity) – **section 16.1(6)**;
- d. prevent parents from being informed that their child is participating in a club or activity, and prevent parents from opting their children out of a club or activity, even if parents are concerned about the sexual or ideological nature of such clubs or activities – **sections 16.1(6), 45.1(4)(c)(i) and 50.1(4)**;
- e. substantially and significantly extends the power of the Respondent to oversee the operation of Independent Schools, as though the Independent Schools were the same as the public and government-operated schools in Alberta;– **sections 28(8) and (9), respectively**;
- f. compel all schools, including the Independent Schools, to establish and adopt internal school policies affirming the rights of their employees under the *Charter* and Alberta *Human Rights Act*, despite the fact that the *Charter* only applies to government, not to private entities such as the Independent Schools – **section 45.1(3)(a)**;
- g. undermine the right of Independent Schools to hire only staff who understand and fully support the school’s values and vision, by requiring schools to confirm that employees will not be discriminated against under any ground in the *Charter* or the Alberta *Human Rights Act*. This violates the Charter section 32 constitutional precept that the *Charter* applies only to the actions of government, not to private bodies, such as the Independent Schools – **section 45.1(3)(b)**;
- h. repudiate the right of Independent Schools to pass a “code of conduct” which requires the principal to consult the school board prior to “immediately” establishing a section 16.1 club such as a GSA – **section 45.1(4)(a)(ii)**;
- i. require Independent Schools to repeat verbatim, in their own school policies, the text of sections 16.1(1), (3), (3.1), (4) and (6) of the *School Act*, in disregard of their

section 2(a) and 2(b) *Charter* rights– **section 45.1(4)(b) and 45.1(4)(d), respectively;**

- j. require that the school’s “code of conduct” or “policy” (regarding section 16.1 clubs and activities) be provided to students upon request, that it be posted online, that it be reviewed annually, and that it be posted on the school’s public website – **section 45.1(6);**
- k. require the public posting of all Ministerial Orders regarding the “code of conduct”, even if the “code of conduct” contradicts the religious beliefs of schools and parents– **section 45.1(7);**
- l. Enable the Minister of Education to establish, add to or replace a school’s “policy” or “code of conduct” in regard to section 16.1 clubs and make any other Order the Minister deems necessary if a school does not create a “policy” or “code of conduct” that in the opinion of Minister does not comply with the requirements, and require the public posting of a Minister’s Order in such an event – **section 45.1(8) and (9), respectively.**

#### **Public Outcry**

48. The tabling and passage of Bill 24, and its proclamation into law, spurred an immediate public outcry from parents and independent schools across the province. The Independent Schools have sought an audience with the Minister of Education, David Eggen, in regard to Bill 24. These requests have been either ignored or refused. No public consultation was carried out prior to the passage of Bill 24.

#### **Refusal of government to provide feed-back on school policies**

49. On November 9, 2015, the Minister of Education ordered all schools in Alberta to submit draft “anti-bullying policies” to him for his review, and to do so by March 31, 2016. The schools complied with this Ministerial Order, and each school in Alberta created and submitted “welcoming, safe, caring and respectful” policies for the Minister’s review.

50. Since March of 2016, in spite of requests from some of the Applicants and from other schools, the Minister of Education has neglected or refused to provide feedback as to whether or not the submitted policies, in his opinion, conform to the *School Act*. The Minister has also neglected or refused to provide the Independent Schools with a sample

“welcoming, safe, caring, and respectful” policy that would, in the Minister’s view, comply with the *School Act*.

### **Effect of the Impugned Sections**

#### **A. Parental Rights protected under Section 2(a) and 7 of the *Charter***

51. The purpose and effect of the Impugned Sections is, *inter alia*, to undermine or weaken the support and protection that children are able to receive from their own parents, by imposing strict and total secrecy in respect of children’s involvement in GSAs or in GSA-related activities. Concerns about the inappropriate sexual and ideological nature of GSAs is set out further below. The Impugned Sections prevent a school from informing parents about their children participating in clubs and in activities that might expose children as young as five to the sexual practices promoted by the Respondent. The Impugned Sections infringe both sections 7 and 2(a) of the *Charter*, and are contrary to sections 1(c), (d), (e) and (g) of the *Alberta Bill of Rights*.
52. Prior to Bill 24, parents could “opt out” of their children’s participation in a class or program or receipt of materials which “deals primarily or explicitly with human sexuality”. Section 50.1(4) of the *School Act* strips parents of the ability to opt their children out of participating in GSAs or GSA-related “activities” when children are provided with, or exposed to matters which deal primarily or explicitly with human sexuality. This unlawfully interferes with the Parents’ constitutional rights protected by sections 2(a) and 7 of the *Charter*, and parental rights to be informed as set out in the *Alberta Bill of Rights*. Parental involvement and school board oversight are also repudiated by *School Act* sections 16.1 and 45.1(4)(a)(ii), which now require the establishment of a club “immediately” upon the request of one child.
53. By promoting “support materials” for GSA clubs using official government web portals, the Respondent has made clear the nature, character and purpose of GSA clubs and related activities. Through these “support materials,” the Respondent has proven itself to be entirely indiscriminate and injudicious in its promotion of GSAs to children as young as five. Many of these “support materials” promote and provide explicit direction for inherently unhealthy sexual activity, without any reference to age or to parental consent for

the viewing of such materials. The Respondent has promoted the following activities and assertions through official government web portals as part of the GSA “support materials”:

- a. The sucking of semen from the anus of another person, an activity known as “felching”;
- b. Visiting a group masturbation night at a local sex club;
- c. Paying to view online pornography;
- d. The insertion of a “rod” into the penis as a means of self-pleasure, an activity known as “sounding”;
- e. Bondage, dominance, submission and sadomasochism (BDSM) activities and products such as creating a “bondage bedroom” by using the “Under The Bed Restraint System” and the “Short Suede Flogger” to “explore ... bondage fantasies”;
- f. The use of anal sex toys and “butt plugs”;
- g. Watching “gay and lesbian couples bare all”;
- h. Advice regarding “blow jobs”;
- i. The act of “anonymous sex” through the use of a hole in a wall intended for such purpose, referred to as a “glory hole”;
- j. The inserting of one’s testicles into the mouth of another person, an activity known as “tea bagging”;
- k. Urinating and defecating on another person, an activity known as “yellow and brown showers”;
- l. That it is “a mistake”, “a myth”, “oppressive” and is “not only misleading, but exclusionary and harmful” to teach and understand that gender is binary and biologically-determined by sexual anatomy;
- m. That gender is not determined by sexual anatomy, chromosomal composition, and sex-based differences in the brain;
- n. That gender is fluid, non-binary, and based entirely on one’s subjective perception;
- o. That biological sex is not an immutable characteristic, but rather arbitrarily “assigned” at birth by one’s parents or medical practitioners;
- p. That any individual is able to identify “as two or more genders”,
- q. That individuals can successfully change their gender and change their sex;

- r. That male children who want to “hide” their penis should use a device known as a “gaff” to tuck the penis between one’s legs;
  - s. That female children should “tape” their breasts to their chests so that they are less apparent under one’s clothing; and
  - t. That “medical transition” to another gender, including taking hormones and having one or more surgeries” is “absolutely necessary” for some people (collectively, the “GSA Materials”).
54. It is reasonably foreseeable that the exposure of children to the GSA Materials may result in confusion and anxiety in many children across Alberta. The Impugned Sections make no distinction based on student age, or handicap or mental disability, regarding exposure to sexual content at clubs or at GSA-related “activities”. Students as young as five years of age can be exposed to sexual content in or through a GSA or related “activity” which the school is required to facilitate by section 16.1 of the *School Act*. The exposure of children to the GSA Materials has occurred, is occurring, and will continue to occur without parental involvement or oversight, because sections 50.1(4), 16.1(6) and 45.1(4)(c)(i) make it illegal to inform parents of their children’s involvement in such clubs or activities. Further, the *School Act* does not require an adult to be present at the GSA or GSA-related activity.
55. The Parents have a constitutional right to know fully of their children’s activities and what their children are exposed to, without legislated secrecy. Parents have a constitutional right to be fully informed, so as to be able to ensure the safety and the proper moral and emotional development of their children. Further, the Parents have a right to educate their own children in accordance with their religious and moral beliefs.
56. The GSA Materials are directly contradictory to the Parents’ Beliefs. As such, the Parents are opposed to the promotion of the GSA Materials to their children, especially through mandatory legislated secrecy.
57. Further, the GSA Materials explicitly promote sexual experimentation and promiscuity, by suggesting that these activities are desirable or legitimate or both, contrary to the Beliefs. The Respondent has made little or no effort to warn of the risks involved in the unprotected exchange of semen, feces and urine, and sexual themes which involve sex toys, bondage and sexual violence. The Respondent has provided no disclaimers or warnings that engaging in such activities may cause infection, disease and debilitation.

### **Harm to Children**

58. The promotion of the GSA Materials and the legislated secrecy surrounding GSA clubs and activities creates an environment conducive to manipulation and to the sexual abuse or exploitation of younger children by older or more sexually experienced youth.
59. As set out in the Affidavit of the Applicant P.T., his developmentally disabled daughter was harmed as a direct result of the removal of parental oversight and the school's decision to keep secret from P.T. and D.T. what was happening with their vulnerable daughter. P.T. is justifiably concerned that exposure to GSA materials, clubs and activities, absent parental knowledge and involvement, will again threaten his daughter's emotional, psychological and physical well-being.
60. A number of the Independent Schools, and the schools attended by the children of the Parents, operate grades K-12. There is a clear risk of irreparable harm to students generally, absent parental oversight on what is presented to children at schools regarding sexuality and gender. This risk is especially pronounced in younger children, or children with developmental and intellectual disabilities such as Autism or Asperger's Syndrome. No distinction is made in the Impugned Sections to account for younger students, or students with developmental and intellectual disabilities such as Autism or Asperger's Syndrome, who are subject to particular risk from being exposed to the ideology and information promoted through GSAs and GSA-related activities.

### **Schools Section 2(a) Freedom of Conscience and Religion**

61. The first fundamental freedom protected by the *Charter* is freedom of conscience and religion. The Independent Schools and (list specific parents) have sincerely-held conscientious and religious beliefs regarding gender, marriage, and sexuality (the Beliefs). Their right to educate the children in their care in accordance with the Beliefs is protected by the *Charter*, the *Alberta Bill of Rights*, and international human rights instruments that are binding on Canada, such as the *International Covenant on Civil and Political Rights*. Parental rights have been repeatedly upheld by the courts. The Impugned Sections infringe and trample on the exercise of the Beliefs by requiring and facilitating the clandestine teaching of a government-promoted sexual ideology that is contrary to the conscientious and religious beliefs of the Independent Schools and Parents.

62. By promoting one particular view or understanding of human sexuality, the Respondent's GSA Materials and their presentation to children absent parental oversight contravene the constitutional requirement of state neutrality. The Impugned Provisions interfere with the exercise of conscientious and religious instruction that the Parents and Independent Schools intend.

### **Section 2(b) Freedom of Expression**

63. Parents, teachers and Independent Schools have freedom of thought, belief, opinion and expression as protected by section 2(b) of the *Charter*. In a free and democratic society, the government cannot compel anyone to express words that are not their own.

64. The Impugned Sections infringe *Charter* section 2(b) by:

- a. compelling the Independent Schools to name clubs titles which are in opposition to the schools' Beliefs – **section 16.1(3.1)**;
- b. requiring schools to state their agreement not to discriminate against an employee or student under the *Charter of Alberta Human Rights Act*, when in fact Independent Schools deliberately seek to hire teachers and other staff who agree with the school's mission, vision and purpose, and have the legal right to hire accordingly. Requiring voluntary associations of citizens (in this case Independent Schools) to behave like government (by disregarding their own religion when hiring staff) is contrary to the *Charter*-protected right of Independent Schools to create and maintain their own religious nature and character. – **section 45.1(3)(b)**; and
- c. requiring all schools to repeat verbatim the text of sections 16.1(1), (3), (3.1), (4) and (6) of the *School Act* (the "Policy Sections"), inclusive, in their own "policy" or "code of conduct", which is an infringement of the right not to be compelled to utter words that one disagrees with – section **45.1(4)(b)** and **45.1(4)(d)**, respectively;
- d. restricting the ability of the Independent Schools to keep parents apprised of their children – **sections 16.1(6), 45.1(4)(c)(i) and 50.1(4)**.

65. Schools cannot be lawfully compelled to promote or participate in, the Respondent's ideology of sexuality and gender as set out in the GSA Materials. While characterizing Bill 24 as anti-bullying legislation, it is the Respondent threatening the safety of children, and bullying Parents and Independent Schools through legislation that violates the *Charter*.



### **Section 2(d) Freedom of Association**

66. The *Charter* protects the right of both individuals and groups to associate freely around common beliefs and values, free of government interference and discrimination. The Impugned Sections infringe the ability to associate around common Beliefs. Section 45.1(8) bestows on the Minister of Education a the power to re-write school policies in his sole discretion, altering the nature of that organization's association, contrary to section 2(d) of the *Charter*.

### **Sections 45.1(3) and (4) infringe Section 32 of the Charter**

67. Parents and Independent Schools have a constitutional right to exercise their fundamental freedoms of expression, religion and association. The *Charter* exists to defend Parents and Independent Schools against government action that violates these freedoms. In contrast, government is bound by the Charter, and therefore has a duty of neutrality towards various religious, anti-religious and non-religious ideologies. Imposing this same duty of neutrality on Parents and Independent Schools violates the freedoms of religion, conscience, expression and association.

68. Section 45.1(3) of the *School Act*, as amended by Bill 24, compels all schools in Alberta to conform to the government's obligations under the *Charter*. This is contrary to section 32 of the *Charter*, which establishes that only government is bound by the *Charter*. In order to enjoy the exercise of their *Charter* freedoms, individuals and private entities are not bound by the *Charter*, but protected from government infringement.

### **No Guidelines for Accommodation**

69. The Impugned Sections legislate the infringement of the rights of parents, teachers, and schools as protected by sections 2(a), 2(b), 2(d), and 7 of the *Charter*. Section 45.2 of the *School Act* states:

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.

70. It is unlawful for the Respondent to pass unconstitutional legislation which broadly infringes the *Charter* rights of parents, teachers, and schools but seek to justify the infringement with the caveat that some of the infringements may be reversed on a case by

case basis. Unconstitutional legislation cannot be saved by such an exemption – it is the Respondent’s obligation to pass only constitutional laws.

71. It is not the Lieutenant Governor’s role, as Her Majesty’s representative in Alberta, to remedy the passage of unconstitutional legislation by exempting schools who decide to apply for an exemption. Governments must respect *Charter* freedoms for all citizens, without forcing citizens to make an application to have their *Charter* freedoms be respected.
72. Further, no parameters for the exercise of the Lieutenant Governor in Council’s discretion are contained in the *School Act*. There is no test, no mechanism and no framework by which the Lieutenant Governor in Council is to determine which schools should be exempted, in whole or in part, from the provisions of section 45.1 of the *School Act*. This absence of legal certainty allows for and enables arbitrary decisions to be made, contrary to the rule of law, one of Canada’s foundational constitutional principles. The requirements of legal certainty, and the rule of law, are not met by the exercise of the whim of the Lieutenant Governor in Council.
73. Further, in announcing the passage of Bill 24, the Minister of Education has stated the Respondent’s intention to limit any exemptions provided.
74. Further, there is no exemption proposed for any of the following sections:
  - i. Section 16.1(1)(a) – immediate institution of GSAs without Board or parental input or approval, and irrespective of the Independent’s School’s religious character;
  - ii. Section 16.1(3.1) – no restrictions on club names can be made on religious grounds;
  - iii. Sections 16.1(6) and 50.1(4) – principal must ensure that information is withheld from parents regarding their children’s activities, even if the parents would otherwise have a right to opt their children out of explicitly sexual content and activities; and
  - iv. Section 45.3 – Independent Schools can be disciplined by the Minister of Education, as he would a public school, for failing to comply with the provisions of the *School Act* which infringe constitutional rights.

75. Even if there were perceivable guidelines for an exemption, to prevent arbitrary decisions being made by the Lieutenant Governor in Council, it is unlawful and unconstitutional for the Legislature to enact unconstitutional legislation with the promise that, on a case by case basis, some of the *Charter* violations will be reversed.

**Evidence to be used in support of this application and a forthcoming application for an interlocutory injunction:**

34. The Affidavit of P.T., the Affidavit of Theresa Ng, the Affidavit of David Joseph Rose, the Affidavit of Paul Neels, and the Affidavit of Sukhvinder Malhotra;
35. Such further and other material as counsel may advise and this Honourable Court will permit.

**Applicable Acts and regulations:**

76. The *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.
77. *Alberta Bill of Rights*, RSA 2000, c A-14.
78. *Alberta Human Rights Act*, RSA 2000, c A-25.5.
79. *School Act*, RSA 2000, c S-3
80. *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*;
81. *Alberta Judicature Act*, RSA 2000, c J-2.
82. *Post-Secondary Learning Act*, S.A. 2003, c. P-19.5
83. The *Alberta Rules of Court*, in particular Rules 3.15, 3.23, 3.24, and such other Rules as may be applicable.
84. Such further and other material as counsel may advise and this Honourable Court will permit.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or

your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).