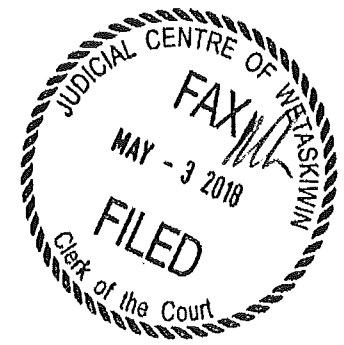


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COURT FILE NUMBER	1712000438
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	WETASKIWIN
APPLICANT	CORNERSTONE CHRISTIAN ACADEMY OF CAMROSE, TAMMY LOEWEN, ARRON PETERSON, and STEVE KOZMENIUK
RESPONDENT	THE BATTLE RIVER SCHOOL DIVISION NO. 31
DOCUMENT	DEED OF THE APPLICANT
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	By Cameron Justice Centre for Constitutional Freedoms #253, 7620 Elbow Drive SW Calgary, Alberta T2V 1K2 Phone: (403) 909-3404 Fax: (587) 747-5310 Email: jcameron@jccf.ca

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PART 1: OVERVIEW

1. This is an Application for an interlocutory injunction staying the decision of the Battle River School Division (“Battle River”) to close Cornerstone Christian Academy (“Cornerstone”), a religious alternative program, pending the outcome of this Honourable Court’s determination of the Originating Application for Judicial Review.
2. The stakes for Cornerstone could not be higher: at issue is its very existence. Cornerstone is currently scheduled to be closed by Battle River at the conclusion of the 2017-2018 school year, on June 30, 2018. If injunctive relief is not granted, Cornerstone will not survive till the hearing for Judicial Review. Instead, Cornerstone will lose its accreditation, registration and funding. Cornerstone’s teachers and students will be dispersed following the “winding down” process put in motion by Battle River, and Cornerstone will close its doors for the first time in 32 years.
3. The decision of Battle River to close Cornerstone was not caused by any failure of Cornerstone to provide quality education or to care for its students. Nor was there any lack of demand for Cornerstone’s services as an alternative program. Rather, the closure of Cornerstone is caused solely by Battle River’s anti-religious and ideological bias against Cornerstone’s constitutionally-protected religious beliefs.
4. Battle River demanded that unspecified and so-called “offensive” portions of the Bible must not be read or studied at Cornerstone. Cornerstone refused to censor the Bible, which it has taught since its inception, and as a result, Battle River decided on June 29, 2017, to terminate the Master Agreement with Cornerstone Christian Academy of Camrose, the parent society that operates Cornerstone. At a recent trustee meeting, on April 26, 2018, Battle River formally voted to proceed with the closure of Cornerstone.
5. If a temporary injunction or stay from the decision to close Cornerstone is not granted, 170 students and their parents, along with dedicated staff, will lose a school that has operated for over 30 years. This loss would be the result of a decision which is a blatant and unjustified infringement of the Applicant’s *Charter* rights, as protected in a free and democratic society, as well as a violation of the *Alberta Bill of Rights* and the *School Act*.

PART 2: THE PARTIES

6. The individual parent Applicants are parents of children currently attending Cornerstone.
7. The Applicant, the Cornerstone Christian Academy of Camrose (the “Society”) is a non-profit company incorporated in 1986 and was registered and accredited to operate Cornerstone, a religious alternative program school pursuant to section 21 of the *School Act*.
8. The Respondent, Battle River School Division No. 31 (“Battle River”), is a public school division, established pursuant to the *School Act*. Its board of trustees is responsible for exercising the governmental powers delegated to it by the *School Act* and to implement the provisions of the *School Act*.
9. As a body established by statute and exercising delegated government authority, Battle River is government in its nature and is bound by the *Canadian Charter of Rights and Freedoms* (the “Charter”). Battle River is constitutionally required to make all of its decisions consistent with the rights and freedoms guaranteed by the *Charter*, including adherence to the duty of state neutrality in matters of religion as required by section 2(a) of the *Charter*.

PART 3: FACTS

Background

10. Cornerstone opened in 1986 and was managed solely and independently by the Society as an independent Christian school until 2009.
11. In 2009, the Society and Battle River agreed that Cornerstone would begin operating as a religious alternative program, within the Battle River School Division. The Society and Battle River executed Master Agreements to this effect in August 2009, and again in 2010 and 2015. The Master Agreements stated that Cornerstone would be an alternative program based on orthodox Christian beliefs and the Bible. The Master Agreement states, *inter alia*:

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. [Emphasis added]

Affidavit of Deanna Margel, Exhibit C, filed April 26, 2018

12. Section 21(1)(a) of the Alberta *School Act* states that alternative program schools are schools that “emphasize a particular language, culture, **religion** or subject-matter”. [Emphasis added]

Excerpt of School Act at **TAB 11**

13. Alberta Education’s Alternative School Handbook states, “[a]lternative programs are about **doing things differently** and they “**involve working collaboratively within the vision and mission of a particular program.**” [Emphasis added]

Affidavit of Deanna Margel, Exhibit A, page 7, filed April 26, 2018

14. The Society is responsible for implementing the Cornerstone Christian Academy School Vision and Purpose Document (the “Vision and Purpose Document”) which references the school’s unique religious character. The Vision and Purpose Document also recognizes the values, mission, and religious beliefs of the parents who associate to form the Society and chose to send their children to a Christian school operated by the Society.

Affidavit of Deanna Margel, para. 7, filed April 26, 2018

15. The Vision and Purpose Document clearly and publicly sets out the religious beliefs, mission, and core values of the Society, including the belief that all of the Bible is true and serves as the foundation for Cornerstone. Battle River was, at all material times, aware that Cornerstone is a Christian school founded on the Bible. Battle River was and is fully aware of the religious beliefs of the Society and its members, and the *School Act* provisions which facilitate Cornerstone as an alternative program.

Affidavit of Deanna Margel, paras. 8-10 And Exhibit B, filed April 26, 2018

16. Since 2009 and through to the present, Battle River has been aware that Cornerstone was teaching and would teach about sexuality, marriage and gender from a Christian perspective, including biblical beliefs that, *inter alia*:

- a) God created people to be either biologically male or female;
- b) God created human sexuality;
- c) Sexuality is to be enjoyed by two people of the opposite sex (one male, one female) within a monogamous marriage relationship;
- d) Marriage was created by God to be the union of a man and a woman to the exclusion of all others, for life (together the “Religious Beliefs”).

Affidavit of Deanna Margel, para 8, filed April 26, 2018

17. At all times, Battle River was aware that the Society and its members adhere to the Religious Beliefs, and that the Religious Beliefs are foundational to the Society’s and Cornerstone’s religious character. Battle River was aware at all material times that the members of the Society associate together for the purpose of manifesting their shared Christian beliefs and practices, including the Religious Beliefs. Neither the Society nor Battle River has ever indicated that the Society should or would change or compromise the Religious Beliefs.

Affidavit of Deanna Margel, paras. 9-11, filed April 26, 2018

18. Parents and students exercise their constitutional freedoms, and their rights under the *School Act*, to choose Cornerstone specifically because of their shared Christian beliefs and practices. Parents, including the Applicant parents herein, trust Cornerstone to teach their children from a biblical perspective, including the teaching of the Religious Beliefs.

Termination of Agreement

19. On June 29, 2017, Battle River terminated the Master Agreement, giving notice that it would wind up the operations of Cornerstone and redistribute the staff and students starting on June 30, 2018 (the “Termination”). The Termination was, on its face, an infringement of the section 2(a), 2(b) and 2(d) *Charter* rights of the Applicants, as well as sections 1(c) (freedom of religion), 1(d) (freedom of speech), 1(e) (freedom of association), and 1(g) (the right of parents to make informed decision respecting the education of their children) as protected by the *Alberta Bill of Rights*.

Affidavit of Deanna Margel, para 32, filed April 26, 2018
Excerpts of the *Charter* and *Alberta Bill of Rights* at **TAB 9** and **TAB 10**

20. The Termination was effected in retaliation for the Society's assertion of its *Charter* freedoms to believe and teach the Religious Beliefs, and to associate with each other with and through a Christian school whose perspective includes the Religious Beliefs.

Affidavit of Deanna Margel, paras. 19-32, filed April 26, 2018

21. The key events which preceded the Termination are as follows:

- a. On January 30, 2017, Battle River demanded that the Society censor portions of the Christian Bible from the Vision and Purpose Document, namely 1 Corinthians 6:9-10, which is an infringement of the Society's section 2(a), 2(b) and 2(d) *Charter* rights and a breach of Battle River's duty of neutrality;
- b. On May 27, 2017 Battle River purported to prohibit any portions of the Christian Bible from being taught at Cornerstone if they were "offensive", the same being refused by the Society, as it infringed the Society's section 2(a), 2(b) and 2(d) *Charter* rights is a breach of Battle River's duty of neutrality;
- c. On June 23, 2017 Battle River tried to require the Society to agree to an Addendum preventing the Society from communicating with parents, the public or its own teachers about any further unreasonable or unconstitutional demands that might be made by Battle River in future;
- d. The Society refused to execute the aforementioned Addendum, which it perceived a gag order on the exercise of its constitutional and legislative rights;
- e. On June 29, 2017 Battle River passed a motion to terminate the Master Agreement and force Cornerstone to close its doors by June 30, 2018. Battle River made vague and unspecified claims to the effect that the Society's education programming at Cornerstone not being compliant with Board policies, the *Alberta Human Rights Act* and the *School Act*.

Affidavit of Deanna Margel, paras. 15-32, filed April 26, 2018

22. On April 26, 2018, Battle River confirmed that, as a result of the Termination, it will proceed to permanently close Cornerstone on June 30, 2018 (the "Closure").

PART 4: APPLICABLE LAW

The Charter

23. The *Canadian Charter of Rights and Freedoms*¹ protects the rights of all Canadians, including the Applicants. The *Charter* states, in part:

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression;
- (d) freedom of association.

Enforcement of guaranteed rights and freedoms

Section 24(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

The Alberta Bill of Rights

24. The *Alberta Bill of Rights*², which protects the rights of all Albertans, including the Applicants, states, in part:

Recognition and declaration of rights and freedoms

1. 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:

- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association;
- (g) the right of parents to make informed decisions respecting the education of their

¹ *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11, Part 1 (the “*Charter*”)

² RSA 2000, c A-14.

children.

The School Act

25. The Applicants note the following provisions of the *School Act*³:

Preamble

WHEREAS the best educational interests of the student are the paramount considerations in the exercise of any authority under this Act;

WHEREAS parents have a right and a responsibility to make decisions respecting the education of their children;

Alternative Programs

21(1) In this section, “alternative program” means an education program that
(a) emphasizes a particular language, culture, religion or subject-matter.

The Test for Injunctive Relief

26. The Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311 (“*RJR-MacDonald*”) established the tripartite test for injunctive relief, as follows: (1) whether there is a serious issue to be tried, (2) whether irreparable harm would result to the Applicants if the injunction is not granted, and (3) whether the balance of convenience between the parties favours granting the injunction to the Applicants.

RJR-MacDonald, Excerpt at **TAB 6**;

Harper v. Canada (Attorney General), [2000] 2 SCR 764 (“*Harper*”), Excerpt at **TAB 3**

PART 5: ARGUMENT

27. Battle River is required to exercise its statutory discretion reasonably and in good faith, in accordance with the purpose of the relevant provisions of the *School Act* that facilitate diversity in educational programming. Battle River does not have untrammelled discretion. Battle River must also respect the *Charter* rights and freedoms of the Society and members

³ RSA 2000, c S-3.

of the Cornerstone community, including students, parents, and school staff. The Closure violates the *Charter* and the *Alberta Bill of Rights, inter alia*, because:

- a. it is not based on the rule of law, or on academic performance or other objective criteria, but is based only on prejudice against or subjective disagreement with the Society's adherence to biblical teachings;
- b. it breaches Battle River's duty to be neutral in matters of religion, as required by section 2(a) of the *Charter*;
- c. it purports to censor portions of the Bible, based on a vague, arbitrary, and ever-shifting standard of "offensiveness", without providing legislative or other criteria for what constitutes "offensive";
- d. it repudiates, or at least significantly undermines, the intention of the *School Act* to provide Alberta parents with meaningful choice amongst a diverse range of educational options for their children;
- e. it interferes with the right of parents to raise their children with a biblical understanding of marriage, sexuality and gender, which is contrary to sections 2(a), 2(b) and 2(d) of the *Charter*, contrary to sections 1(c), 1(d), 1(e) and 1(g) of the *Alberta Bill of Rights*, contrary to section 26(3) of the *Universal Declaration of Human Rights*, and in violation of Article 18 of the *International Covenant on Civil and Political Rights*, and contrary to the Preamble of the *School Act*;
- f. it results from the Society's disagreement with an unlawful Addendum which would have censored the Society's communications with parents and staff, interfere with democratic accountability vis-à-vis elected officials, and restrict the Society's internet postings, contrary to the *School Act* and sections 2(a) and 2(b) of the *Charter*;
- g. it infringes the *Charter* right of freedom of religion for all members of the Society's community, including for the purposes of education and of manifesting belief, contrary to section 2(a) of the *Charter*;
- h. it infringes the *Charter* right of freedom of thought, opinion and expression for all members of the Society's community, including for the purposes of expressing and teaching the Religious Beliefs, contrary to section 2(b) of the *Charter*; and

- i. it infringes the *Charter* right of freedom of association for all members of the Society's community, including for the purposes of associating and creating an educational institution, contrary to section 2(d) of the *Charter*.

Roncarelli v. Duplessis, [1959] S.C.R. 121, para. 41, Excerpt at **TAB 8**

28. The Applicants have applied for Judicial Review of the Termination. However, the effect of the Termination is that Cornerstone will close on June 30, 2018. In order to prevent irreparable harm to Cornerstone, its students, parents, and staff prior to a determination regarding the Judicial Review, the Applicants apply for injunctive relief.

Serious Issue to be Tried

29. The Court in *RJR-MacDonald* characterized this branch of the test as follows:

What then are the indicators of "a serious question to be tried"? There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case.

...
Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

RJR-MacDonald, paras. 54-55, Excerpt at **TAB 6**;

30. The Closure will have a profound, direct and wide-ranging impact on 170 students and their families. The inability of Cornerstone to survive till a judicial review is a serious issue to be tried. Battle River has voted to "wind down" Cornerstone under section 2 of the *Alberta Closure of Schools Regulation*, Alta Reg 238/1997. This process requires the re-assignment of Cornerstone's students and teachers, as well as the removal of accreditation and funding. Without students, teachers, accreditation and funding, there is no Cornerstone.
31. The questions as to whether the Termination and the Closure were effected lawfully, in accordance with the *Charter*, the *Alberta Bill of Rights*, and the *School Act*, are serious ones. The Applicants' arguments are not frivolous or vexatious. The issue of whether the Termination and Closure decisions are constitutional is a serious issue that exceeds the low

threshold set by the courts, when the *Charter* is involved, for the first branch of the tripartite analysis.

Harper, para. 4, Excerpt at **TAB 3**;
Gift Lake Métis Settlement v Alberta (Aboriginal Relations), 2015 ABQB 654, paras. 52-53, Excerpt at **TAB 2**;
National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec, 2017 QCCS 5459, para. 35, Excerpt at **TAB 5**;
Rogers v. Greater Sudbury (City) Administrator of Ontario Works, [2001] O.J. No. 2167, para. 10, Excerpt at **TAB 7**

Irreparable Harm

32. The second part of the tripartite test asks if the Applicants have established that they will suffer irreparable harm if pretrial injunctive relief is withheld. “Irreparable” refers to the nature of the harm suffered rather than its magnitude, and it is harm that cannot be quantified in monetary terms or which cannot be cured.

RJR-MacDonald, para. 64, Excerpt at **TAB 6**

33. The Saskatchewan Court of Appeal in *Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc.*, 2011 SKCA 120 (“*Potash Corp.*”) has warned that setting too high a standard on this part of the test will “stultify” the purpose sought to be achieved by giving a Court the discretion to grant interlocutory relief:

Given this underlying reality, it seems wrong to demand that a plaintiff seeking an injunction must prove to a high degree of certainty that he or she will suffer irreparable harm if the injunction is not granted. In many situations, this approach would self-evidently frustrate the balancing exercise which a court should be undertaking in deciding if interlocutory relief is warranted. For example, assume that failure to grant a plaintiff an injunction involves only a medium probability that the plaintiff will suffer irreparable harm. But, assume as well that, if such harm is incurred, it will be catastrophic. If the analysis ends at the point of the plaintiff being unable to establish the prospect of irreparable harm to a high level of certainty, a full balancing of the risks concerning the relevant non-compensable damages will not be possible. In other words, the true overall risk of irreparable harm will always be a function of both the likelihood of the harm occurring and its size or significance should it occur. A sound analytical approach should take this into account.

...
In short, the same basic logic which recommends the serious issue to be tried standard in relation to the strength of the plaintiff's case consideration also recommends against requiring the plaintiff to prove to a high level of certainty that irreparable harm will result if the injunction is denied. The purpose sought to be achieved by giving a judge the discretion to grant interlocutory relief will be "stultified," to use Lord Diplock's term,⁴ if he or she could consider in the balance of convenience only such irreparable harm as is certain or highly likely to occur.

...
Therefore, in the end, it is sufficient that, as a general rule, a plaintiff seeking interlocutory injunctive relief be required to establish a meaningful risk of irreparable harm or, to put it another way, a meaningful doubt as to the adequacy of damages if the injunction is not granted. This is a relatively low standard which will serve to fairly easily move the analysis into the balance of convenience stage of the decision-making. It is there that all of the relevant considerations can be weighed and considered with as much subtlety as the circumstances require.

Potash Corp., paras. 59-61, Excerpt at **TAB 4**

34. The Court in *Potash Corp.* also stated that the question of irreparable harm was "best seen as an aspect of the balance of convenience", or the third part of the tripartite test from *RJR-MacDonald*.

Potash Corp., para. 113, Excerpt at **TAB 4**

Harm to Cornerstone

35. The Closure, if left to stand, will effectively end Cornerstone, after being in operation for 32 consecutive years. As an alternative program school under section 21 of the *School Act*, Cornerstone does not have status or funding as an independent school. Cornerstone's accreditation and funding is entirely dependent on continuing to exist as an alternative program and part of the public school division.

36. If a pre-trial injunction is not granted, the harm to Cornerstone will be permanent: for all intents and purposes it would cease to exist as of July 1, 2018. It will be wound down, de-accredited and defunded at the conclusion of the current school year, which is June 30,

⁴ Quoting Lord Diplock in *American Cyanamide Co. v. Ethicon Ltd.*, [1975] 1 All E.R. 504 (H.L.), p. 509.

2018. Its students will be dispersed to other schools, its faculty will be compelled to obtain new employment.

37. Cornerstone is the only Christian school in the Battle River School Division. It draws students from an approximately 3,000 square KM area. Cornerstone provides a welcoming, safe, and caring learning environment to approximately 170 students.

Affidavit of Deanna Margel, para 37, filed April 26, 2018

38. If Cornerstone closes, its students will be forced to either attend a local Battle River public school or be homeschooled.

Affidavit of Deanna Margel, para 38, filed April 26, 2018

39. If injunctive relief is not granted, the Cornerstone teaching staff will also be dispersed and be forced to take other teaching positions, if they can find them, in local Battle River public schools or at other schools a further distance away. Some will be forced to travel long distances, or even move, if they want to continue to teach in a Christian school environment.

Harm to Students and Parents

40. The disruption to students' lives caused by the closure of their school will be profound. Some of them have attended Cornerstone together, from an early age. Many of them will be dispersed to one of the 15 Battle River non-Christian schools in the area. Some of these students have had profoundly negative experiences at Battle River's public schools and are scared to be compelled to returned.

Affidavit of Deanna Margel, para 38, filed April 26, 2018

Affidavit of L.L., paras. 3-25; 31, filed April 26, 2018

Affidavit of E.L., paras. 2-14, filed April 26, 2018

41. The parent Applicants have chosen to educate their children in a Christian school context and environment, and are exercising their legal right under the *School Act* to do so. Their religious and conscience motivations for doing so are also protected by the *Charter*. The

evidence before this Court shows that there is a lack of other Christian schools, whether independent or alternative programs, in the area surrounding Kingman.

Affidavit of Deanna Margel, para. 38, filed April 26, 2018

42. Some parents have chosen to enroll their children in a Christian program for more than religious reasons. The evidence shows that severe bullying, in some cases motivated by religious prejudice, has occurred at Battle River public schools.⁵ If Cornerstone is closed, many Cornerstone students, some of whom came to Cornerstone to escape the bullying experienced at Battle River public schools, will be compelled to attend Battle River public schools, where they risk again facing the threat of being bullied because of their disabilities or their religious beliefs. The Respondent failed to consider the best interests of students when rendering its Decision.

Affidavit of Deanna Margel, para 38, filed April 26, 2018

Affidavit of L.L., paras. 3-25; 31, filed April 26, 2018

Affidavit of E.L., paras. 2-14, filed April 26, 2018

43. Section 2(d) of the *Charter* protects the right to associate for the purposes of pursuing an education as one of the “fundamental” freedoms. As stated by the Honourable Appeal Justice Kerans in *Black v. Law Society of Alberta*,⁶

In my view, the freedom [under section 2(d) of the *Charter*] includes the freedom to associate with others in exercise of *Charter*-protected rights and also those other rights which - in Canada - are thought so fundamental as not to need formal expression: to marry, for example, or to establish a home and family, pursue an education, or gain a livelihood.

Black v. Law Society of Alberta, 1986 ABCA 68, para. 42, Excerpt at **TAB 1**

The Harm Cannot be Remedied

44. The damage to the Applicants if Cornerstone is closed is irreparable and permanent. Money will not bring back the Cornerstone school, once closed. Money will not replace a

⁶ Appeal to Supreme Court of Canada dismissed in *Black v. Law Society of Alberta*, [1989] 1 SCR 591.

religious education to a community that has no religious education alternatives. Money cannot bring back the teachers, who will have been forced to go elsewhere to find new employment. Money will not erase the breach of constitutional rights and religious discrimination. No amount of damages and no remedy after the fact could put the school community back together, with the current students and teachers, after it is closed.

Balance of Convenience

45. The Applicants state that the following, *inter alia*, should be considered in an analysis of the balance of convenience:

- a) If an injunction is not granted Cornerstone will cease to exist and will not survive to a hearing for Judicial Review;
- b) No religious school exists in the Battle River School Division to replace Cornerstone, and the loss to the religious community would be severe;
- c) The Respondent is not prejudiced by the granting of an interim injunction, because Battle River will, in any event, be required to provide education for the same 170 students who now attend Cornerstone, and Alberta Education will be required to allocate the same, or more resources, to do so;
- d) There is no complaint as to the quality of the educational programming at Cornerstone, or a lack of demand for the religious alternative programming that is Cornerstone, so there is no demonstrable harm to the continuation of Cornerstone pending the hearing for Judicial Review;
- e) Parents, students and the Society have rights pursuant to the *Charter* and international treaties to pursue the education of their choice, and have claimed that the Decision violates these rights;
- f) The Respondent has recklessly accused the Society of violating its policies and provincial legislation, but has failed or refused to state which provisions the Society has violated and how;
- g) The Respondent by virtue of the Decision has altered the *status quo* between the parties, and the restoration of the status quo pending Judicial Review is justified

and appropriate in all of the circumstances, with safeguards that the Court deems equitable, just and necessary; and

- h) The public interest in the administration of justice is not upheld by permitting the Respondent to openly violate the Applicants' constitutional rights in the manner in which it has absent Court intervention to uphold the rule of law.

The Public Interest

- 46. The Supreme court has found that the public interest must be analysed in deciding whether to grant an injunction staying a government decision that involve claims of *Charter* rights violations. The Court was careful to note that the government does not have a "monopoly" over the public interest and that the public interest includes "both the concerns of society generally and the particular interests of identifiable groups".

RJR-MacDonald, paras. 70-71, Excerpt at **TAB 6**

- 47. It is against the public interest to violate *Charter* freedoms, and to disperse and disrupt the lives of students without a legitimate reason.
- 48. It is not against the public interest for a lawful faith-based school to operate in accordance with the religious beliefs held by adherents of that faith. In fact, in accordance with what is in the best interests of the public, the *School Act* explicitly permits the existence of faith-based alternative program schools as part of the public education system in Alberta and as part of a means to maximize school choice.
- 49. It has not been alleged by Battle River that Cornerstone's academics are in any way deficient. Cornerstone is in full compliance with all applicable legislation. Neither the best interests of students nor the public interest is served in any way through the closure of an alternative program school, for no discernable reason apart from an anti-religious prejudice on the part of Battle River.
- 50. The Closure, if left to stand, will do harm to the best interests of students and to the public interest by unnecessarily disrupting the education of approximately 170 students, closing a school without justification and in breach of *Charter* rights, and causing further strain on

an already over-burdened public education system by necessitating an immediate influx of up to 170 additional students.

51. The public interest is not served by permitting a school division to violate the *Charter* by closing an academically sound school, well-attended and loved by its students and parents, because of unsupported and vague claims of non-compliance with “human rights”.

52. The best interests of students and the public interest is best served by granting the injunction to stay the Closure. The public interest is not served by a school closure that recklessly tramples on constitutional rights and achieves the opposite of the policy goals of providing diverse educational choices.

Undertaking as to damages

53. Battle River is not prejudiced by keeping Cornerstone open. Cornerstone has been in operation for 32 years with no demonstrable harm to anyone, including Battle River. Alberta Education is required to fund the education of students under the *School Act*, whether those students are enrolled at Cornerstone or elsewhere. The Society undertakes to indemnify Battle River for any loss it suffers as a result of the injunction if the Applicants are unsuccessful at the ultimate hearing for judicial review in this matter.

Affidavit of Deanna Margel, sworn May 5, 2018, at **TAB 12**

PART 6: CONCLUSION

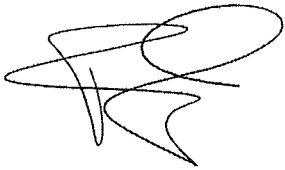
54. Regarding applications for injunctive relief, the Saskatchewan Court of Appeal has stated that “[t]he ultimate focus of the court must always be on the justice and equity of the situation in issue.” The Applicants submit that the Closure was unlawful, as a violation of the *Charter*, the *Alberta Bill of Rights*, the *School Act*, and the rule of law. The Applicants request the intervention of this Honourable Court to ensure that it survives long enough to have an opportunity to see its rights vindicated on Judicial Review.⁷

⁷ The Record of Proceedings, comprising many hundreds of pages, was served on the Applicants on May 1, 2018, two days prior to the deadline for the filing of this Brief. The Applicants have had no opportunity to review it and determine if it is complete or if subsequent production must be made to ensure the accuracy of the record.

PART 7: ORDER REQUESTED

55. An interlocutory injunction pursuant to section 24(1) of the *Charter*, staying the June 29, 2017 decision to terminate the Master Agreement between the Society and Battle River and also staying the April 26, 2018 decision to close Cornerstone, pending a determination of the constitutionality and administrative legality of the Termination, in order to ensure that Cornerstone survives to litigate its rights, as well as to protect students and parents from the disruption occasioned by the Termination and Closure;
56. Further, or in the alternative, an interlocutory injunction prohibiting Battle River from winding down the operations of Cornerstone;
57. Further, or in the alternative, a stay of the Termination and the Closure pursuant to Rule 3.23(1) of the *Alberta Rules of Court*, pending final determination of the rights of the Applicants in the matter herein described.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3rd day of May 2018.



Jay Cameron
Counsel for the Applicants