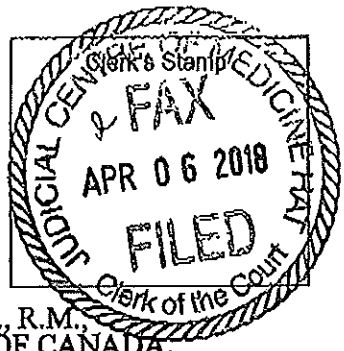

COURT FILE NUMBER	1808-00144
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	MEDICNE HAT
APPLICANTS	P.T., D.T., F.R., K.R., P.H., M.T., J.V., A.S., R.M., UNIVERSAL EDUCATION INSTITUTE OF CANADA, HEADWAY SCHOOL SOCIETY OF ALBERTA, THE CANADIAN REFORMED SCHOOL SOCIETY OF CALGARY, GOBIND MARG CHARITABLE 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, LIVING TRUTH 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	**BRIEF OF THE APPLICANTS**

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 jcameron@jccf.ca Telephone: 403.909.3404 Facsimile: 587.747.5310

Contents

PART 1: OVERVIEW

1. This is an Application for an interlocutory injunction staying portions of the Alberta *School Act* as amended by *Bill 24: An Act to Support Gay-Straight Alliances* ("Bill 24"), pending final determination by this Honourable Court of their constitutionality.

2. Bill 24 was introduced in the Alberta legislature in November of 2017, and received Royal Assent on December 15, 2017. Bill 24 amended the Alberta *School Act*, the effect of which is to threaten child safety by restricting parental knowledge of their own children, including who has access to their children, what activities their children are engaged in, and what materials are being provided to their children. This legislated restriction on parental knowledge undermines the ability of parents to support and protect their children, and is without precedent in Canadian history.

3. Children are vulnerable to being exploited, both sexually and emotionally, by adults or by their own peers, resulting in 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. Countless Canadian criminal cases demonstrate that predators, abusers and bullies thrive in an environment where secrets are kept from watchful parents.

4. Bill 24's legislated absence of parental knowledge increases the risk of irreparable harm being inflicted on more children, through the creation of secret places and secret spaces.

5. No responsible parent would entrust her or his child to the care of a daycare, hospital, athletic or dance club that created a place and time of secrecy, in regard to which parents would not be told what was transpiring with their children. Yet the Bill 24 amendments to the *School Act* turn GSAs and GSA-related activities into secret spaces that no parent may know about.

6. These new *School Act* provisions violate, *inter alia*, the *Canadian Charter of Rights and Freedoms*, the *Alberta Bill of Rights* and the Alberta *Family Law Act*. While their constitutionality is determined by this Honourable Court, they should be stayed to prevent irreparable harm to children.

PART 2: THE APPLICANTS

7. The individual parent Applicants have children attending public, Catholic and independent schools in Alberta ("the Parents").

8. 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 teachers and administrators intentionally withheld information from P.T. and D.T. that their daughter was pretending to be a boy at school. P.T. and D.T.'s child became suicidal before her parents fully learned and understood the confusing influences at school.

9. The Applicant independent schools were each established for the purpose of providing students with an education consistent with the religious beliefs of their respective faiths and denominations (the "Independent Schools").

10. The Independent Schools recognize the legal and constitutional rights of parents to know of their children's whereabouts and affairs, including who has access to their children, and when and how, and what materials and suggestions are being made to their children.

11. The Applicant, Parents for Choice in Education ("PCE"), is a non-profit corporation registered in Alberta

12. 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.

13. Further details of the Applicants are set out in the Originating Application, filed.

PART 3: APPLICABLE LAW

1. 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– **subsections 28(8) and 28(9), respectively;**

f. compel all schools in Alberta, including the Independent Schools, to establish and adopt internal school policies affirming the rights of their employees under the *Charter,* 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 Independent 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 require the school 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** (collectively, the "Impugned Sections").

Excerpts of the *School Act* at Tab 16

14. The Impugned Sections are in *prima facie* conflict with constitutional and legislated rights in the province of Alberta.

15. Section 7 of the *Charter* states, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

16. Section 7 constitutionalizes the liberty and security interests of parents in their children, including a right to know where there children are; what their children are doing; who, specifically, has access to their children; who their children are associating with; and what their children are shown, taught and exposed to. Section 7 also protects the right of parents to choose the kind of education that shall be given to their children, and the right of parents to educate their children in accordance with their own moral and religious convictions.

17. Section 2(a) of the *Charter* protects freedom of conscience and religion, including the right of parents to raise and educate their own children in accordance with their own moral and religious convictions, and the right of schools and educators to support the parent's endeavours in this regard.

18. Section 2(b) of the *Charter* protects the freedom of thought, belief, opinion and expression, including the right of schools to apprise parents of their children's activities.

19. Section 2(d) of the *Charter* protects the right of schools and parents to associate for the purpose of educating their children.

20. Section 24(1) of the *Charter* provides for the right of "anyone" to "apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances" when their *Charter* rights or freedoms have been infringed or denied.

Excerpts of the *Charter* at Tab 14

21. Sections 1(b)(c)(d) and (g) of the *Alberta Bill of Rights* protect the legal rights of the Applicants to educate their children in accordance with their moral and religious beliefs.

Excerpts of the *Alberta Bill of Rights* at Tab 13

22. The *Alberta Family Law Act* protects the rights of parents to be "informed and consulted about and to make all significant decisions affecting" their children on a day to day basis, and to "nurture" their child's "physical, psychological and emotional development."[1] Sections 16.1(6) and 50.1(4) of the *School Act* directly contradict the *Alberta Family Law Act* in this regard.

Excerpts of *Family Law Act* at Tab 15

23. The *School Act* itself, in its preamble, states that "parents have a right and a responsibility to make decisions respecting the education of their children."

Excerpts of the *School Act* at Tab 16

The Test for Injunctive Relief

24. The Supreme Court of Canada *RJR-MacDonald Inc. v. Canada (Attorney General)*[2] 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.[3]

PART 4: ARGUMENT

Serious Issue to be Tried

25. 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.

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[1] See *Family Law Act*, SA 2003, c F-4.5, sections 21(4)-(6), Excerpt at Tab 15.
[2] [1994] 1 SCR 311 ("*RJR-Macdonald*"), Excerpt at Tab 7.
[3] Also see generally, *Harper v. Canada (Attorney General)*, [2000] 2 SCR 764. Excerpt at Tab 2.

> 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.[4]

26. The Applicants submit that the following factors, *inter alia*, demonstrate that there is a serious issue to be tried as to the constitutionality of the Impugned Sections:

a) The Impugned Sections, for the first time in the history of Alberta, or Canada, legislatively prevent the transmission of knowledge to all parents without exception, about their own children, which is *prima facie* contrary to the *Charter*, the *Alberta Bill of Rights*, and the *Family Act*, as well as two international conventions, and the Applicants have applied for declaratory relief of same;

b) The Applicants have submitted evidence of serious harm that has already been inflicted on one child, the daughter of P.T., which occurred as a result of the intentional and sustained withholding of information from the Parents P.T. and D.T. about what occurred in a GSA and at school;

c) The Impugned Sections now mandate that information regarding P.T. and D.T.'s daughter *again* be withheld from them, jeopardizing their daughter's safety and life, which is a serious issue;

d) It is foreseeable and apparent that a law which creates secret spaces and secret places which oust parental knowledge will result in harm to children that would otherwise not have occurred, including but not limited to predation, exploitation and bullying. The nefarious role that secrecy plays in abuse has been repeatedly and abundantly illustrated in criminal law jurisprudence, and in the case of the daughter of P.T. and D.T.

27. There is a serious issue to be tried regarding the constitutionality of the Impugned Section. As the Quebec Superior Court stated in a similar recent application to temporarily stay

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[4] *RJR-MacDonald*, paras. 54-55. Excerpt at Tab 7.

legislation, what is at stake is "no less than the constitutionality of provisions" enacted by the provincial legislature.[5] This is a serious issue to be tried.

Irreparable Harm

28. 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.[6]

Harm from Secret Exposure to GSA Materials

29. No definition of a "Gay-Straight Alliance" ("GSA") is present in the *School Act*, but the Respondent has shed a great deal of light on this question. By promoting "resources" for GSA clubs on official government web portals, the Respondent has made clear the nature, character and purpose of GSA clubs and activities. The Respondent's "resources" promote and provide explicit direction for sexual activity, without any indication as to what is age-appropriate, and without any reference to parental consent for the viewing of such materials. The Respondent has promoted the following activities and claims through its 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";

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[5] *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459, para. 35, Excerpt at Tab 3.
[6] *RJR-MacDonald*, para. 64, Excerpt at Tab 7.

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 the science-based understanding that gender is binary and biologically-determined by sexual anatomy is "a mistake", "a myth", "oppressive" and is "not only misleading, but exclusionary and harmful";
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 female children who want to present as male should "pack" a prosthetic penis and testicles so as give the appearance of possessing male genitalia; and
s. That "medical transition" to another gender, including taking hormones and having one or more surgeries" is "absolutely necessary" for some people (the "GSA Materials")

Theresa Ng Affidavit, paras. 23-27, 31-33
P.T. Affidavit, paras. 23-25, 27

30. It is foreseeable that the exposure of children to the GSA Materials will result in confusion and anxiety in children. The Impugned Sections make no distinction based on student age, cultural background or mental disability, regarding exposure to sexual content at GSA club meetings 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. The exposure of children to the GSA Materials, which includes one-sided and politicized information about "transgenderism" and various practices, will

necessarily, by force of law, occur without parental involvement, oversight or consent, 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.

31. The daughter of P.T. and D.T., who is autistic and intellectually-disabled, was only 12 years of age when she was first encouraged to attend a GSA. She was vulnerable, impressionable, and badly wanted to have friends and be liked. She had no idea what a bisexual is, or what the concept of transgenderism entailed, but through the power of suggestion she was quickly convinced by her peers and teachers that she was both, and that she should begin to live a double life secret from her parents. She became confused, anxious, and depressed. Her teachers intentionally withheld information about her struggles and activities in the GSA from her parents for over a year. She became suicidal. Only after her parents removed her from the school for her own safety did they realize the extent to which she had been influenced without their knowledge.

Affidavit of P.T., paras. 19, 22, 23, 65-68

32. The presentation of the GSA materials will result, as it did the case of P.T.'s daughter, in harm to other children. Parents have a right to be aware of what is occurring at schools in order to guide their children.

33. In his Affidavit, P.T. provides evidence of the psychological and emotional harm to their autistic daughter. This harm was a direct result of her parents not being informed regarding their daughter's struggle with issues of sexuality and gender and her participation in a GSA. P.T. and D.T.'s daughter almost lost her life to suicide because her school chose to withhold information from her parents. P.T. has testified to the risk of further harm now that the *School Act* prevents a school from informing parents of GSA-related events at school.

34. A number of the Applicant 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 sexuality and gender, but this risk is especially pronounced in younger children, or children with developmental and intellectual disabilities, who are subject to particular risk from being exposed to the ideology and information promoted through GSAs and QSAs.

35. The Applicants note that the Saskatchewan Court of Appeal in *Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc,*[7] has warned that setting too high a standard on irreparable harm 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, [8] 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.[9]

36. The Honourable Appeal Justice Richards in *Potash Corp.* 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.*[10]

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[7] 2011 SKCA 120 ("*Potash Corp.*"), Excerpt at Tab 4.
[8] The Sask. Court of Appeal in *Potash Corp.*, quoting Lord Diplock in *American Cyanamide Co. v. Ethicon Ltd.*, [1975] 1 All E.R. 504 (H.L.), p. 509, Excerpt at Tab4.
[9] *Potash Corp.*, paras. 59-61, Excerpt at Tab 4.
[10] *Potash Corp.*, para. 113, Excerpt at Tab 4.

Harm from Mandating Situations of Secrecy

37. Sections 16.1(6), 45.1(4)(c)(i) and 50.1(4) of the Impugned Sections legislate the withholding of information from parents about their children. Schools and principals are now prohibited by law from informing parents who has access to their children at a GSA, how many other children or youth attend, the ages of other youth, what materials, sexually and graphically explicit or otherwise, are being presented to children. No distinction on age or disability is made by the amended *School Act*; information in regard to the activities of an autistic child as young as five years of age must be withheld from parents by the principal and school. A climate of legislated secrecy endangers children.

38. Children are vulnerable, and they are each different in their vulnerability. Some of them have enhanced vulnerabilities due to intellectual-disabilities, such as the daughter of P.T. and D.T. They come in all ages and sizes. But, they all want to be liked. Some are desperate to make friends and feel accepted because of insecurities. Some are ready to do almost anything to be liked by others.

39. There is no lack of cases involving the tragic sexual and psychological abuse of minor children by adults in positions of trust and authority. The abuse typically occurs in situations where abusers have periods of exclusive access to their victims, such as when an adult, acting in the capacity as a caretaker, is leading a class, extracurricular activity, or sport. The abusers often abuse dozens of children scores of times, over the span of months or years.

40. Below are examples of the life-shattering abuse suffered by children that has occurred in a context of secrecy where there was no parental oversight:

    a. *R. v. M. (J.L.)*, [2003] N.J. No. 204: The abuser was himself a minor, but he was a Sergeant Major in the cadets, which put him in a position of trust and authority over his fellow cadets. He sexually exploited and abused a male cadet several years younger than himself multiple times through his many opportunities to be alone with the cadets under his authority. The Court noted at paragraph 2:

> Sadly, this type of offence is not a rare occurrence in Canada. Canadian children are subjected to such sexual abuse on a regular, consistent and continuous basis. This crime is committed against them in their homes, in their schools, at their playgrounds, in their churches, in their sports clubs and in organizations that they join, such as the one in this case, in order to find help and guidance in making the difficult transition from

> childhood to adulthood. Our response as a society is not one for which we should be proud. We continuously express our outrage at such offences but we do little in response.

b. *R. v. Haugo*, 2006 BCPC 319: The abuser was a Track and Field coach. Over the course of many years, and through the regular opportunities he had to be alone with small groups of children, he abused several girls between the ages of 11-18. The abuse included touching of the girls' breasts and nipples, and digital vaginal penetration. The court noted the abuse was "devastating" to his victims, not just because of the abuse itself, but because they trusted him and felt betrayed. The court also noted that the abuse was enabled by the fact that the perpetrator was in a position of authority by virtue of his athletic expertise, and a position of trust, which he breached.

c. *R. v. McLachlan*, 2013 SKQB 332: The abuser was a public-school teacher who sexually abused a 15-year old boy. The abuse occurred over several years and involved many incidents. The court noted that the teacher was in a position of trust over her victim, which she breached. The court also stated at paragraph 16:

> Parents who send their children to school must be able to expect that their children will not be sexually exploited. Children, even seemingly mature high school students, can be vulnerable.

d. *R. v. James*, 2012 MBPC 31: Graham James was a prominent hockey coach in the 1980s and 90s. During that time, he sexually abused many teenage boys, some of them hundreds of times, through the many opportunities he had to be alone with them without parental knowledge of what was occurring. He was in a position of trust and power over the hockey players he coached and mentored, a position he abused. Several professional hockey players have expressed the devastating life-long emotional and psychological harm they have experienced as a result of the abuse.

e. *R. v. McLeod*, 2014 ONCJ 671: During the 1960s and 70s Mr. Mcleod was an elementary school teacher and scoutmaster. Over the course of several years he sexually abused many boys, as young as 10 years old, through the opportunities he had to be alone with a small group of them. Even 40 years later, some of his victims

were still suffering emotionally and psychologically from the abuse, and contemplated suicide. One victim described his reaction to the abuse as following:

> Ashamed, I knew that I must hide this disgrace by not saying anything to anyone and rather than seeking help I chose to suffer in silence and started looking for a way out.[11]

f. *R. v. Leroux*, 2015 SKCA 48: Paul Leroux sexually abused over 20 boys as young as 9 years of age, up to and including anal intercourse, in the 1960 and 70s while he was a residential school teacher. Again, the abuse was made possible because the perpetrator was in a position of trust and had exclusive access to the children in his care. The court described the perpetrator's role as a "parental figure in the male students' lives" while the students were at the school.[12]

a. *R. v. Lasik*, [1999] N.J. No. 207: At least 19 boys at an orphanage, some as young as 9 years of age, were sexually abused by the perpetrator, who taught at the orphanage in the 1950s. Some boys were sexually exploited hundreds of times, including anal intercourse. The abuse occurred in many varied locations throughout the orphanage. The court stated at paragraph 24:

> [T]he breach of trust in these circumstances is at the highest end of the trust scale. I accept that Ronald Justin Lasik acted in the place of a parent to the boys[.] ... These individuals had already come from unhappy circumstances and as is evidenced by their testimony, many felt they had nowhere to turn for help.

41. The sexual abuse, exploitation and manipulation of children constitutes sustained, life-long, irreparable harm. There are many similarities between the above cases, including the similar situational contexts in which the abuse occurred. Serious abuse, with life-long consequences suffered by the victims, has occurred hundreds of times in the context of secrecy where parents blindly trusted someone who they knew was with their children. There is much greater potential for abuse, both from adults and other youth, in a legislated time and place of secrecy where the prohibition of parental knowledge is a known factor by would-be abusers. The risk is not hypothetical. The risk is demonstrable, predictable and real.

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[11] *R. v. McLeod*, para. 29, Excerpt at Tab 12.
[12] *R. v. Leroux*, para. 9, Excerpt at Tab 9.

42. The most alarming similarity in the above cases is the fact that the victims, regardless of their age at the time, almost universally were unable to come forward and tell someone about the abuse until many years later, if at all. In some cases, the abusers threatened and manipulated their victims to remain silent, but often the child's fear, shame, embarrassment, and sense of worthlessness was enough to keep the child silent.[13] Theo Fleury, sexually abused by Graham James, describes the impact of the abuse as follows:

> I was just a kid. A child. I was completely under Graham James's control. And I was scared. I did not have the emotional skills, the knowledge, or the ability to stop the assaults or change my circumstances. ... His sickness changed my life, changed the lives of everyone who was close to me, and caused more pain that can be measured.[14]

43. One of the purposes of according rights to parents in regard to their children is to ensure children are protected. The law recognizes that nobody is more invested in protecting children, then those children's parents. In regard to section 7, the Supreme Court of Canada has recognized that the *Charter* gives parents "plain" rights generally to make decisions for the good of their children. In *B. (R.) v. Children's Aid Society of Metropolitan Toronto*,[15] the Honourable Justice LaForest stated:

> ...**I would have thought it plain that the right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent.** As observed by Dickson J. in R. v. Big M Drug Mart Ltd., supra, the Charter was not enacted in a vacuum or absent a historical context. **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.** In Hepton v. Maat, 1957 CanLII 18 (SCC), [1957] S.C.R. 606, our Court stated (at p. 607): **"The view of the child's welfare conceives it to lie, first, within the warmth and security of the home provided by his parents".**
>
> ...
>
> In recent years, courts have expressed some reluctance to interfere with parental rights, and state intervention has been tolerated **only when necessity was demonstrated.** This only serves to confirm 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.
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> ...

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[13] *R. v. Lasik*, para. 27, Excerpt at Tab 8; *R. v. McLeod*, paras 29-30. 42, Excerpt at Tab 12.
[14] *R. v. James*, para. 80, Excerpt at Tab 6.
[15] [1995] 1 SCR 315 ("*B.R.*"), at paras. 83-85, Excerpt at Tab 1.

> As already stated, the common law has always, in the absence of demonstrated neglect or unsuitability, presumed that parents should make all significant choices affecting their children, and has afforded them a general liberty to do as they choose.
>
> **... our society is far from having repudiated the privileged role parents exercise in the upbringing of their children.** This role translates into a protected sphere of parental decision-making which is rooted in the presumption that **parents should make important decisions affecting their children both because parents are more likely to appreciate the best interests of their children and because the state is ill-equipped to make such decisions itself.** Moreover, individuals have a deep personal interest as parents in fostering the growth of their own children. This is not to say that the state cannot intervene when it considers it **necessary** to safeguard the child's autonomy or health. But such intervention **must be justified.** In other words, parental decision-making must receive the protection of the *Charter* in order for state interference to be properly monitored by the courts, and be permitted **only** when it conforms to the values underlying the *Charter*. [emphasis added]

44. Bill 24 represents a serious infringement of the section 2(a) and section 7 rights of parents, and the recognition by the Supreme Court of Canada that parents are best suited to raise their children and make decisions in regard to their health and education, both of which are implicated by the Impugned Sections. These rights are enshrined in the Alberta *Bill of Rights* and the Alberta *Family Law Act.*

45. Combined with the mandated secrecy, the promotion of the GSA Materials could result in the sexual exploitation or abuse of younger children by older or more sexually experienced children and youth, as happened in *R. v. M. (J.L.)*, described above. Legislated secrecy about GSA clubs and related activities makes it far less likely that parents would learn about such abuse or exploitation

46. The harm from sexual and psychological abuse is grave. It can never be fully repaired, and certainly not with money.

Balance of Convenience

47. As the Supreme Court of Canada has noted:

> Applications for interlocutory injunctions against enforcement of still-valid legislation under constitutional attack raise special considerations when it comes to determining the balance of convenience.[16]

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[16] *Harper v. Canada (Attorney General)*, 2000 SCC 57, para. 5, Excerpt at Tab 2.

48. These "special considerations" relate to the public interest. It is trite law that it is generally in the public interest to not suspend the operation of democratically enacted legislation prior to a determination of the constitutionality of the Impugned provisions.[17]

49. However, there are exceptions, as in the case of *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, where the Quebec Superior Court found that the public interest weighed in favour of the applicants, and therefore stayed the impugned provisions pending a determination of the constitutionality of the Impugned provisions. Indeed, as the Supreme Court has ruled:

> [T]he government does not have a monopoly on the public interest.
> ...
> Each party is entitled to make the court aware of the damage it might suffer prior to a decision on the merits. In addition, either the applicant or the respondent may tip the scales of convenience in its favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought. "Public interest" includes both the concerns of society generally and the particular interests of identifiable groups.

50. Further, The Supreme Court has found that "denying ... the injunction may deprive plaintiffs of constitutional rights simply because the courts cannot move quickly enough."

51. The public interest is best served by granting the injunction to stay the Impugned Sections. The public interest is best served when children are not exposed to unsafe situations or the threat of sexual and psychological abuse. The public interest is best served when the constitutional rights of parents to be informed is upheld and they are able to make decisions regarding their children's activities for the safety and benefit of the child. Far from advancing the public interest, the Impugned Sections do great injury to it by violating parents' section 7 and 2(a) *Charter* rights and by placing children in harm's way.

52. The public interest is not served by legislation that recklessly tramples on constitutional rights and achieves the opposite of the policy goal of making Alberta schools a safe place. Mandated secrecy involving children does not improve safety, it erodes it, with potentially disastrous consequences.

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[17] *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, para. 45, Excerpt at Tab 3.

53. Legislating secret times and places where no one is legally permitted to inform parents what is occurring is not in the public interest. Legislating secrecy from parents is unsafe and threatens children.

54. P.T. and D.T.'s daughter is but one example of a child put at risk by the *School Act* as amended by Bill 24. There are many thousands of children in Alberta, each with their own unique set of needs, whether emotional, physical or psychological. The amended *School Act* legislates the keeping of information from every parent of every child in Alberta, irrespective of age or personal circumstance, if the child in question is involved in an ideological club or activity as outlined in the amended *School Act*. This is a broad and threatening, totalitarian legislative overreach with lasting and foreseeable consequences, and is not in the public interest.

55. Prior to Bill 24 changing section 50.1 of the *School Act*, parents could "opt out" of their children's participation in an educational environment, program or club which "deals primarily or explicitly with … human sexuality". Contrary to the public interest, section 50.1(4) of the *School Act* strips parents of the ability to do so in regard to their children's participation in GSAs or QSAs or their related "activities" if the sexual activity in question or the sexual material presented is in regards to homosexuality or transgenderism, thus unlawfully interfering 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* (and the *Family Law Act*).

56. As explained in their Affidavits, the Parents intend to educate their children in accordance with their religious and moral beliefs, as is their constitutional right in Canada. The GSA Materials directly contradict the Parents' Beliefs. As such, the Parents are opposed to the promotion of the GSA Material to their children, especially absent parental oversight and informed consent.

57. The GSA Material explicitly promotes sexual experimentation and promiscuity, by suggesting that these activities are desirable or legitimate or both, contrary to the Beliefs. Further still, the GSA Materials promote confusion and an inaccurate understanding of biological science, as well as promote lifestyles, as desirable or legitimate or both, that are plagued by drastic surgeries, life-long reliance on harmful drugs, and mental health

problems. The GSA Materials, therefore, expose children as young as five years of age to physical, sexual, psychological, and emotional harm.

PART 4: RELIEF SOUGHT

58. The Applicants apply to this Honourable Court for the following relief:

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).

c. Further, or in the alternative, an interlocutory injunction prohibiting the Respondent from enforcing the Impugned Sections as against the Applicants, or taking punitive actions against the Applicants for non-compliance with the Impugned Sections pending a determination of the constitutionality of the Impugned Sections by this Honourable Court;

d. Such further and other relief as this Court deems just and equitable;

e. Costs.

PART 7: CONCLUSION

59. Behind every child is a parent, sometimes two, who knows their child better than the government does. The Impugned Provisions threaten the safety of children by prohibiting the informing of parents regarding their children. The interference of constitutional and legislated rights by the Impugned Sections is a serious issue. There is a clear risk of irreparable harm to the daughter of P.T. and D.T. and many other vulnerable kids like her who need their parents support and knowledge of their circumstances, and the balance of convenience is with parents and children.

60. An interlocutory injunction is required to stay the operation of the Impugned Sections until their constitutionality is determined.

PART 8: ORDER REQUESTED

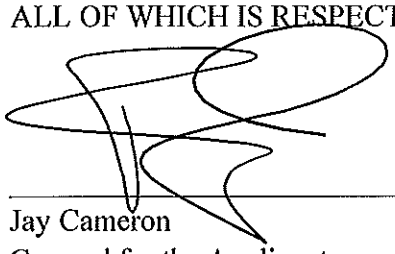
61. For the reasons set out above, the Applicant seeks an Order for injunctive relief pending the constitutionality of the Impugned Sections as set out in paragraph 58 herein, and specifically to:

a) Staying the operation of the Impugned Sections of the Alberta *School Act* pending determination of their constitutionality by this Honourable Court;

b) Prevent the Respondent from enforcing the Impugned Sections as against the Applicants, or taking punitive actions against the Applicants for non-compliance with the Impugned sections pending a determination of the constitutionality of the Impugned Sections by this Honourable Court;

c) Such further and other relief as this Honourable Court deems appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6th day of April, 2018.



Jay Cameron
Counsel for the Applicants

SCHEDULE "A": LIST OF AUTHORITIES

Cases Cited

TAB 1: *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315.

TAB 2: *Harper v. Canada (Attorney General)*, [2000] 2 SCR 764.

TAB 3: *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459.

TAB 4: *Potash Corp. of Saskatchewan Inc. v. Mosaic Potash Esterhazy Ltd. Partnership*, 2011 SKCA 120.

TAB 5: *R. v. Haugo*, 2006 BCPC 319.

TAB 6: *R. v. James*, 2012 MBPC 31.

TAB 7: *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

TAB 8: *R. v. Lasik*, [1999] N.J. No. 207.

TAB 9: *R. v. Leroux*, 2015 SKCA 48.

TAB 10: *R. v. M. (J.L.)*, [2003] N.J. No. 204.

TAB 11: *R. v. McLachlan*, 2013 SKQB 332.

TAB 12: *R. v. McLeod*, 2014 ONCJ 671.

Legislation

TAB 13: *Alberta Bill of Rights*, R.S.A. 2000, c. A-14.

TAB 14: *Canadian Charter of Rights and Freedoms*, R.S.C. 1985, App. II, No. 44, Sched. B, Pt. I.

TAB 15: *Family Law Act*, S.A. 2003, c. F-4.5, s. 21.

TAB 16: *School Act*, R.S.A 2000, c. S-3 (Current as of April 1, 2018)