COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBER:1801-0239AC

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REGISTRY OFFICE: CALGARY

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, PONOKA CHRISTIAN SCHOOL, PROVIDENCE CHRISTIAN SCHOOL SOCIETY, LIVING WATERS CHRISTIAN ACADEMY, NEWELL CHRISTIAN SCHOOL SOCIETY, SLAVE LAKE KOINONIA CHRISTIAN SCHOOL, YELLOWHEAD KOINONIA CHRISTIAN SCHOOL SOCIETY, THE RIMBEY CHRISTIAN SCHOOL SOCIETY, LIVING TRUTH CHRISTIAN SCHOOL SOCIETY, LIGHTHOUSE CHRISTIAN SCHOOL SOCIETY, DEVON CHRISTIAN SCHOOL SOCIETY, LAKELAND CHRISTIAN SCHOOL SOCIETY, 40 MILE CHRISTIAN EDUCATION SOCIETY, HIGH LEVEL CHRISTIAN EDUCATION SOCIETY, PARENTS FOR CHOICE IN EDUCATION, and ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL – WESTERN CANADA

STATUS ON APPEAL: APPELLANTS

RESPONDENT: HER MAJESTY THE QUEEN IN RIGHT OF

ALBERTA

STATUS ON APPEAL: RESPONDENT

DOCUMENT: **APPELLANTS' FACTUM**

Appeal of the Judgement of
The Honourable Madam Justice J. C. Kubik
Dated the 27th day of June, 2018
Filed the 27th day of June, 2018

FACTUM OF THE APPELLANTS

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I. FACTS

Introduction

1. This is an appeal of portions of the decision of the lower court[1] (the "Decision") dismissing a request for a stay of certain provisions of the *School Act*[2] pending final determination of their constitutionality. The Appellants also appeal the dismissal of their request for an injunction to prevent the Government of Alberta from taking punitive action against schools which do not comply in the interim with the challenged portions of the *School Act.*
2. Sections 16.1(6), 45.1(4)(c)(i) and 50.1(4) of the *School Act*[3] (the "Secrecy Provisions") require all schools to withhold information from parents about their children relating to their attendance at clubs known as "Gay-Straight Alliances" ("GSAs"), as well as GSA-related activities. Section 16.1(1) requires all schools in Alberta to "immediately" establish a GSA if there is a student request.
3. The Secrecy Provisions make no distinction based on age, disability or any other vulnerability that a particular child may have, when requiring schools to withhold information from parents. The *School Act* also fails to establish safeguards, *inter alia*, on what material can be used at a GSA[4] or the age of the child that may view them, the persons who may have access to children at a GSA, the age groups of children who may be present together at the same time at a GSA, the supervision of children at a GSA, or the location where GSAs are held.
4. These failures of the *School Act*, coupled with the legislated blanket prohibition on informing all parents about their own children, are creating a serious threat to children, and are a grave infringement of parental rights as protected by sections 7 and 2(a) of the *Canadian Charter of Rights and Freedoms*,[5] section 1(g) of the *Alberta Bill of Rights,*[6] and the parental rights set out in the *Family Law Act.*[7]
5. Given the foregoing, this Appeal also asks this Honourable Appellate Court to enjoin the Alberta Government from taking punitive steps against the Appellant schools regarding the implementation of the provisions of the *School Act* which are challenged in the main action, including the Secrecy Provisions, pending a final determination of their constitutionality.

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[1] *PT v. Alberta,* 2018 ABQB 496 (the "Decision"), BOA, Vol. 2, TAB 17.
[2] *School Act*, RSA 2000, c S-3, BOA, Vol. 3, TAB 35.
[3] *School Act,* Vol. 3, TAB 35.
[4] Transcript of Questioning of Wendy Boje, held June 15, 2018, at 78:21-24, Extracts of Key Evidence ("EXTRACTS"), Vol. 5, TAB 114.
[5] *The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK),* 1982, c 11.
[6] *Alberta Bill of Rights*, RSA 2000, c A-14, BOA, Vol. 3, TAB 31.
[7] *Family Law Act,* SA 2003, c F-4.5, BOA, Vol. 3 TAB 33.

Despite the flaws in the *School Act* which endanger child safety, the Minister of Education and his officials have, both publicly and privately, threatened to defund or de-accredit the Appellant schools if they do not fully and immediately implement the *School Act* as amended by Bill 24.

6. The Appellants respectfully submit that they meet the tripartite test for injunctive relief in this matter, and that the lower court judge erred in law and fact in failing to grant relief.
7. The Appellants also ask this Honourable Appellate Court to overrule the finding of the lower court that the "immediacy provision" in section 16.1(1) of the *School Act* does not raise a constitutional issue. Given the flaws in the Secrecy Provisions, it is respectfully submitted that the lower court's finding was an error in law.
8. Finally, this Appeal asks this Honourable Appellate Court to overrule the rejection of the evidence of Drs. Miriam Grossman, Quinten Van Meter, P.T. and J.P. that was filed at the lower court. The Appellants respectfully submit that the rejection of the expert evidence and the evidence of P.T. and J.P. was an error in law, and not grounded in any flaw in the evidence. The Appellants have also applied to adduce new evidence which was not available prior to the Decision (the "New Evidence").
9. The Appellants request that the Appeal be granted, with costs.

The Appellants

10. The Appellants are parents who have children attending public and independent religious schools (the "Parents"), and independent schools of the Jewish, Sikh and Christian faiths (the "Schools"). Parents for Choice in Education ("PCE"), a non-profit corporation which advocates for high-quality education driven and governed by parental choice, and the Association of Christian Schools International – Western Canada ("ACSI"), a national and provincial non-profit with a membership of 73 schools representing over 25,000 students, are also Appellants.

The Parental Provisions

11. Sections 16.1(6) and 45.1(4)(c)(i) of the *School Act* require schools to prevent the communication of information to parents about their children regarding GSAs and GSA-related activities. Section 50.1(4) removes the ability of parents to opt their children out of a GSA or GSA-related activity on the basis of its ideological or sexual content presented to children, or for any other reason.[8] These prohibitions on a parent's right to be appropriately

[8] *School Act,* section 50.1(1) and (4), BOA, Vol. 3, TAB 35.

informed apply regardless of whether a child is at a heightened risk of harm from such content due to age, disability or other characteristics rendering the child vulnerable.

12. Section 16.1(1)(a) of the *School Act* requires a principal to "immediately" establish a GSA upon a student request, without consultation with the school board or parents, and without regard to the nature, character and foundational beliefs of the school.

Results of a lack of parameters around GSAs

13. A great deal of evidence was adduced before the lower court, much of which was not referred to in the Decision, despite reference to it by the Appellants in both oral and written argument. The evidence establishes that GSA meetings[9] and activities[10] are being held off school property, and occasionally in towns and cities other than where the host school is located, without any parental notification. No provision of the *School Act* requires GSAs to take place on school property. There are a growing number of GSAs in elementary schools.[11] No parental notification is required under the *School Act* to take a student off school grounds for GSA meetings and GSA-related activities, irrespective of the age of the child. In fact, the Secrecy Provisions prevent such parental notification.[12]

14. The Decision also ignores the evidence that persons at GSAs, as well as GSA materials, attempt to discredit those who hold traditional beliefs concerning sexuality, marriage and gender.[13] The Respondent's official GSA website, directed at children as young as five, hosted explicit and graphic sexual material.[14] Leaders of GSAs show films with graphic depictions of explicit sex acts to the students in their GSAs.[15] Members of the public attend GSAs without parental oversight or permission.[16]

15. Further, there is also evidence that GSA-related activities, such as "Camp fYrefly in schools"[17] involve the promotion of sex toys and non-monogamous relationships.[18] Camp fYrefly is now

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[9] Affidavit of ND, EXTRACTS, Vol. 2, TAB 42.
[10] Affidavit of Donald Stacey ("Stacey Affidavit") at para 10, EXTRACTS, Vol. 3, TAB 96.
[11] Affidavit of Hilary Mutch ("Mutch Affidavit") at Ex D, p 2, para 6; Ex I, pp 2, 6, 14, and 17 at para 7, EXTRACTS, Vol. 2, TABs 36 and 41, respectfully.
[12] Affidavit of FR ("FR Affidavit") at para 23, EXTRACTS, Vol. 1, TAB 12; Affidavit of AA ("AA Affidavit") at paras 38, 39, 55, 56. Students are told parents will not be told about GSAs because of student safety, and it is illegal to discuss GSAs with parents.
[13] FR Affidavit at paras 20-21, EXTRACTS, Vol. 1, TAB 12; Stacey Affidavit at paras 3-4, EXTRACTS, Vol. 3, TAB 96; Affidavit of Theresa Ng ("Ng Affidavit"), at paras 22-23, 26-30, EXTRACTS, Vol. 2, TAB 48.
[14] Affidavit of Theresa Ng at paras 31-33 and Exs L-P, EXTRACTS, Vol. 2, TAB 48, Vol. 2, TABs 60-64, respectfully; Affidavit of Donald Stacey at paras 11-13, EXTRACTS, Vol. 3, TAB 96.
[15] Affidavit of Donald Stacey at paras 11-13, EXTRACTS, Vol. 3, TAB 96.
[16] Affidavit of Donald Stacey at para 10(ii), EXTRACTS, Vol. 3, TAB 96.
[17] Mutch Affidavit at paras 8-9: "The LGBTQ+-straight alliance focus of Camp fYrefly means that there are many similarities between the camp and GSAs operating in schools." See also Ex B, EXTRACTS, Vol. 2, TABS 32.
[18] Ng Affidavit at 33, Ex P, EXTRACTS, Vol. 2, TAB 64.

operated by the Calgary Sexual Health Centre in Alberta Schools and is a GSA-related activity, contrary to the assertion of the lower court.[19]

16. The lower court found that one of the things being taught at a GSA is "gender identity".[20] Evidence before the lower court shows that GSAs are used to teach the theory that gender is entirely subjective and not dependent upon or related to one's biological sex.[21] The lower court Decision failed to address this evidence, as well as expert evidence in regard to the biological fact that sex is established at a genetic level, and that one's identity does not alter one's sex, nor can it ever do so.[22] The beliefs promoted through GSAs also contradicts the values and beliefs of many families[23] and faith-based schools.[24]

Heightened vulnerability and GSAs

17. The lower court rejected as hearsay[25] the evidence from two different families who had children attending GSAs at schools in different areas of the province: one rural, one urban. In both cases the children experienced gender dysphoria and then suicidal depression, while school staff in a position to observe the children refused or failed, to inform the parents about their children's struggles.[26]

18. The lower court rejected the evidence of the two families as unreliable and anecdotal hearsay, claiming there was a lack of "direct evidence from the children or clear corroboration."[27]

19. The Appellants have now applied to adduce new evidence in this case directly from AA, the child referred to in the affidavit of PT.

20. In her Affidavit, AA, who is autistic and also has other developmental challenges, describes struggling with learning difficulties, the difficulty of dealing with the early onset of puberty, trouble making friends, and being encouraged to attend her school's GSA by her teacher.[28] AA deposes that she was taught the GSAs' view of gender: that gender is based only on feelings, and that girls could use "packers" (fake penis and testicles) and "binders" (chest

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[19] Decision, para. 24, BOA, Vol. 2, TAB 17.
[20] Decision at para 28, BOA, Vol. 2, TAB 17.
[21] Ng Affidavit at paras 20-30, EXTRACTS, Vol. 2, TAB 48.
[22] See Affidavit of Quentin Van Meter, M.D., F.C.P. ("Van Meter Affidavit") at paras 13-20, EXTRACTS, Vol. 4, TAB 107; and Affidavit of Miriam Grossman ("Grossman Affidavit") at para 4, EXTRACTS, Vol. 1, TAB 18.
[23] FR Affidavit at paras 20, 34, EXTRACTS, Vol. 1, TAB 12.
[24] Affidavit of Murray Muldrum ("Muldrum Affidavit") at paras 9, 22, EXTRACTS, Vol. 2, TAB 25.
[25] Decision, at para. 28, BOA, Vol. 2, TAB 17.
[26] See Affidavit of PT, sworn April 4, 2018 ("PT Affidavit"), EXTRACTS, Vol. 5, TAB 118; Affidavit of JP ("JP Affidavit"), EXTRACTS, Vol. 2, TAB 20.
[27] Decision at para 28, BOA, Vol. 2, TAB 17.
[28] AA Affidavit at paras 2, 8-11.

bands) to appear as a male.[29] AA's evidence corroborates the evidence of her father, PT, as well as the affidavit evidence of JP, whose daughter attended a GSA in a different city.[30]

21. Shortly after joining the GSA, AA testifies that she began to believe that she was bisexual, and then concluded she was transgender.[31] Again, this is similar to the daughter of JP who was also strongly encouraged by the GSA to "transition" to being a boy.[32] When AA later announced that she was really a girl, she faced rejection and hostility from students and teachers.
22. AA also testifies to the strong affirmation she received when she "came out" as transgender,[33] and how good it made her feel to finally be experiencing popularity.[34] AA and the daughter of JP were both encouraged by GSA leaders to identify as a male, change their name, participate in boys' activities, and use the boys' washrooms and change-rooms.[35]
23. At her GSA, the daughter of JP was told stories about kids getting kicked out of their home after coming out to their parents, causing her to be afraid of sharing her struggles with her parents.[36] AA states that her teacher told her that her parents were abusing her for not letting her transition.[37] The teacher promised to keep her attendance at the GSA secret from her parents, and encouraged AA to move out of her parents' home. The teacher further stated that it would be illegal for her parents to know that she was attending a GSA.[38]
24. Both AA and the daughter of JP were encouraged to take hormones to facilitate their transition, and to consider surgery.[39]
25. Shortly after transitioning to identifying as males, AA and the daughter of JP began to experience worsening mental well-being, eventually leading both to suicidal depression and attempting suicide.[40]
26. Both AA's and JP's well-being only improved when they were reconnected with their parents, and were removed from the influences of their GSAs.[41]
27. The experiences of these young girls are not unusual or isolated. The recently released *Littman*

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[29] AA Affidavit at para 13.
[30] JP Affidavit at para 13, EXTRACTS, Vol. 2, TAB 20.
[31] AA Affidavit at paras 14-15.
[32] JP Affidavit at paras 8-9, 11, 13, 14, EXTRACTS, Vol. 2, TAB 20.
[33] AA Affidavit at paras-17-18.
[34] AA Affidavit at paras 17, 21.
[35] AA Affidavit at paras 20, 31-32; JP Affidavit at paras 11, 13, EXTRACTS, Vol. 2, TAB 20.
[36] JP Affidavit at para 12, EXTRACTS, Vol. 2, TAB 20.
[37] AA Affidavit at para 24.
[38] AA Affidavit at paras 24, 38-39, 55-56.
[39] AA Affidavit at paras 18, 52; JP Affidavit at para 14 EXTRACTS, Vol. 2, TAB 20.
[40] AA Affidavit at paras 23, 24, 27, 29, 38, 39; JP Affidavit at paras 19, 21-22 EXTRACTS, Vol. 2, TAB 20.
[41] AA Affidavit at paras 30, 41-43; PT Affidavit at paras 54, 66-69, EXTRACTS, Vol. 5, TAB 118; JP Affidavit at paras 22-24, EXTRACTS, Vol. 2, TAB 20.

Study[42] of survey responses from 256 different families from Canada, the United States, the United Kingdom and other countries, notes the peculiar prevalence of "Rapid-onset gender dysphoria"[43] occurring in the context of belonging to a peer group, followed by worsening mental well-being.[44] The *Littman Study* notes:

> Rapid presentation of adolescent-onset gender dysphoria and gender dysphoria cases occurring in clusters of pre-existing friend groups is not consistent with current knowledge about gender dysphoria and has not been described in the scientific literature to date.[45]

28. The *Littman Study* raises concerns that "online content may encourage vulnerable individuals to believe that nonspecific symptoms and vague feelings should be interpreted as gender dysphoria stemming from a transgender condition" and that "adolescents may come to believe that transition is the only solution to their individual situations." The Littman Study also found that exposure to internet content that is uncritically positive about transitioning may intensify these beliefs, and that those teens may pressure doctors for immediate medical treatment."[46] Alberta GSAs are making use of online resources promoting transgender identities.[47] The *Littman Study* found that nearly a third of the children brought up the issue of suicides in transgender teens as a reason that their parent should agree to transitioning treatment.[48]
29. The *Littman Study* found that over 62% of the adolescent and young adult children (referred to as "AYAs") who experienced rapid-onset gender dysphoria had one or more prior diagnoses of a prior psychiatric disorder or neurodevelopmental disability.[49] This indicates the enhanced vulnerability such children have to experiencing rapid-onset gender dysphoria.
30. Among peer groups, the average number of individuals who became transgender-identified

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[42] Littman L (2018) Rapid-onset gender dysphoria in adolescents and young adults: A study of parental reports. PLoS ONE 13(8): e0202330, available at https://doi.org/10.1371/journal.pone.0202330 (the "*Littman Study*"), attached as Exhibit G to the Affidavit of Michelle Gusdal, sworn September 6, 2018. The Appellants have applied to introduce the *Littman Study* into evidence before this Honourable Appellate Court. The *Littman Study* was released after the Decision, and was not previously available.

[43] "For the purpose of this study, rapid-onset gender dysphoria (ROGD) is defined as a type of adolescent-onset or late-onset gender dysphoria where the development of gender dysphoria is observed to begin suddenly during or after puberty in an adolescent or young adult who would not have met criteria for gender dysphoria in childhood." *Littman Study,* at para 4. The *Littman Study* notes that ROGD is "the management of adolescent-onset gender dysphoria is more complicated than the management of early-onset gender dysphoria and that individuals with adolescent-onset are more likely to have significant psychopathology."

[44] It is worth noting that over 85% of the surveyed parents supported same-sex marriage and over 88% supported transgender rights. *Littman Study* at p 6, 10.

[45] Ibid at p 4.

[46] Ibid at p 4.

[47] See FR Affidavit at paras 19-21. The Assistant to the Deputy Minister of Education during Questioning conceded that the *School Act* establishes no parameters or safeguards regarding the materials which may be used at a GSA, or in regard to the age of the child that may be exposed to materials without parental consent. Transcript of Questioning of Wendy Boje, held June 15, 2018, at 78:21-24, 83:10-18 EXTRACTS, Vol. 5, TAB 114.

[48] *Littman Study* at p 10.

[49] *Littman* at p 10.

was over three individuals per group.[50] The peer groups were described as possessing "intense groups dynamics where friend groups praised and supported people who were transgender-identified and ridiculed and maligned non-transgender people."[51] After coming out as transgender, over 60% of the children experienced greater popularity within their friend group.[52] The vast majority of reported cases affected females (82.8%).[53]

31. One example the *Littman Study* cited states:

> A 14-year-old natal female and three of her natal female friends are part of a larger friend group that spends much of their time talking about gender and sexuality. The three natal female friends all announced they were trans boys and chose similar masculine names. After spending time with these three friends, the 14-year-old natal female announced that she was also a trans boy.[54]

32. The study also noted that the "[s]everal AYAs expressed significant concern about the potential repercussions from their friend group when they concluded that they were not transgender after all."[55] The study noted fears of AYAs of returning to their school, but that when they were relocated to a different school, "both respondents reported that their teens have thrived in their new environments and new schools."[56]

33. The *Littman Study* also noted the bullying which can occur in such peer groups. The study cites as an example an incident in which students "...were asked to leave [a school-based LGBT club] because they were not queer enough [as straight and bisexual allies]. [One of them] was [then] bullied, harassed and denounced online."[57]

34. The *Littman Study* records significant concerns about the health clinicians involved in treating the AYAs, including a failure to appropriately consider other issues these children had, such as mental health conditions, trauma, Asperger's or autistic traits.[58] One description of interactions with health clinicians related: "What does concern me is that the people she talked to seemed to have no sense of professional duties, but only a mission to promote a specific social ideology."[59] The study's author reports:

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[50] *Littman Study* at p 15.
[51] *Littman Study* at p 16.
[52] Ibid. One of the example responses from a surveyed parent reported: "Great increase in popularity among the student body at large. Being trans is a gold star in the eyes of other teens." *Ibid* at p 17.
[53] *Littman Study* at p 1.
[54] *Littman Study* at p 15.
[55] Ibid at para 17.
[56] Ibid at para 17.
[57] Ibid. at para 18 [brackets included in the *Littman Study*].
[58] Ibid at pp 26-27.
[59] Ibid at p 27.

> The findings that the majority of clinicians described in this study did not explore trauma or mental health disorders as possible causes of gender dysphoria or request medical records in patients with atypical presentations of gender dysphoria is alarming. The reported behavior of clinicians refusing to communicate with their patients' parents, primary care physicians, and psychiatrists betrays a resistance to triangulation of evidence which puts AYAs at considerable risk.[60]

35. One of the hypotheses offered to explain the findings is that "[s]ocial contagion is a key determinant of rapid-onset gender dysphoria":

> It is unlikely that friends and the internet can make people transgender. However, it is plausible that the following can be initiated, magnified, spread, and maintained via the mechanisms of social and peer contagion: (1) the *belief* that non-specific symptoms (including the symptoms associated with trauma, symptoms of psychiatric problems, and symptoms that are part of normal puberty) should be perceived as gender dysphoria and their presence as proof of being transgender; 2) the *belief* that the only path to happiness is transition; and 3) the *belief* that anyone who disagrees with the self-assessment of being transgender or the plan for transition is transphobic, abusive, and should be cut out of one's life.[61]

36. The second hypothesis provided is that the rapid-onset gender dysphoria experienced by children is a maladaptive coping mechanism for other difficulties they are experiencing, including mental health issues.[62]

37. The *Littman Study* describes the risks of harm to young people thusly:

> If the above hypotheses are correct, rapid onset of gender dysphoria that is socially mediated and/or used as a maladaptive coping mechanism may be harmful to AYAs in the following ways: (1) non-treatment or delayed treatment for trauma and mental health problems that might be the root of (or at least an inherent part of) the AYAs' issues; (2) alienation of the AYAs from their parents and other crucial social support systems; (3) isolation from mainstream, non-transgender society, which may curtail educational and vocational potential; and (4) the assumption of the medical and surgical risks of transition without benefit.[63]

38. According to the O'Brien Institute for Public Health at the University of Calgary, an estimated 1.2 million Canadian children are affected by mental illness.[64] Paired with the *Littman Study*'s findings that over 60% of children who experienced rapid-onset gender dysphoria had a prior psychiatric disorder or neurodevelopmental disability,[65] an alarming number of Canadian children are vulnerable to the presentation of content "that is uncritically positive about transition" and that encourages them to believe "that nonspecific symptoms and vague feelings

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[60] Ibid at p 35.
[61] Ibid at p 32.
[62] Ibid at p 33.
[63] Ibid at p 34.
[64] *O'Brien Report* at para 10.
[65] *Littman* at p 10.

should be interpreted as gender dysphoria stemming from a transgender condition" and "that transition is the only solution to their individual situation".[66]

39. In the Affidavits of PT, ND, Dr. Miriam Grossman, Dr. Quieten Van Meter, and more recently the Affidavit of AA, the Applicants have provided detailed evidence of the harm caused by the combined effects of GSAs advancing a particular ideological view of gender and of doing so in secret, without informing parents. The experiences outlined in the affidavits of PT, ND and AA show vulnerable school girls being encouraged to attend GSAs , being told by GSAs that they were transgender, being encouraged to start "transitioning", and then experiencing gender confusion and suicidal depression. In regard to both girls, scenarios, teachers promoted a "trans" narrative to the children while withholding information from parents.

40. Both Drs. Grossman and Van Meter, the rejection of whose evidence by the lower court is part of this appeal, expressed concerns that presenting sensitive identity-challenging information, such as the latest gender theories, to vulnerable children in the absence of their parent's oversight and care, is likely to harm some children. Dr. Grossman, an experienced psychiatrist in good standing, explained:

> The idea that it is possible or advisable to attempt to "transition" promoted by activists blurs and calls into question the most essential aspect of identity – whether one is male or female. **It is confusing and frightening for the vast majority of children, especially young children**, to learn that people are not necessarily what they appear to be, that doctors sometimes remove a penis and give people medicine to grow a beard or breasts. This information is often overwhelming for an adult to absorb, let alone a child. **Especially in the most vulnerable children** – those who already have anxiety, learning disability, lower IQ, or lack of stability at home (to mention just a few possibilities) – **the exposure to frightening, age-inappropriate information may lead to more symptomatology.**[67]

41. Dr. Van Meter, who specializes in pediatric endocrinology, stated "there is unquestionable proof of harm to children by promoting affirmation therapy, hormonal and surgical treatment to outwardly change the sex of the patient."[68] Dr. Van Meter also cites the Dhejne study,[69] which measured the long-term effects of people in Sweden who had affirmation, cross-sex hormone therapy and surgical manipulation, and found that their suicide rate was 19 times

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[66] Ibid at p 4.
[67] Grossman Affidavit, para. 5(iv, v), EXTRACTS, Vol. 1, TAB 18.
[68] Van Meter Affidavit at para 9, EXTRACTS, Vol. 4, TAB 107.
[69] Dhejne C et al, Long-term follow-up of transsexual persons undergoing sex reassignment surgery: cohort in Sweden, PLoS ONE, 2011;6 (the "Dhejne Study"), attached as Exhibit F to the Van Meter Affidavit, EXTRACTS, Vol. 4, TAB 113.

higher than the general population, and this in one of the most progressive, LGBTQ-affirming countries in the world.

Threats to Defund and De-Accredit the Appellant Schools

42. The Education Minister requested that every school in Alberta submit its anti-bullying policies to him by March 31, 2016. The Appellant schools did so. During the ensuing two-and-one-half years, the Minister did not provide feed-back to the Appellant school as to whether or not their policies were acceptable to him.

43. On April 6, 2018, the Minister of Education publicly stated: "Let me be clear: Bill 24 is the law and it will be enforced.... Schools that don't follow the law will risk having their accreditation and funding stripped, period."[70]

44. In emails sent to a number of the Appellant Schools on or about August 27, 2018, the Deputy Minister of Education, Curtis Clarke, asserted their "polic[ies], in our opinion, [are] not compliant with section 45.1 of the *School Act*" and warned:

> We acknowledge your request for feedback on your policy. You will receive a subsequent email from SafeCaring@gov.ab.ca shortly that provides detailed feedback on your policy. Upon receipt of this subsequent email, **you will have 30 calendar days to post a compliant policy** in a prominent location on your school authority's website. [71]

45. The Deputy Minister then threatened the schools as follows:

> Failure to comply may result in consequences that can include a Ministerial Order establishing a policy and requiring the posting of the policy, an investigation or inquiry, and/or funding implications. An investigation or inquiry may result in the suspension or cancellation of accreditation, or any other order the Minister deems appropriate.[72]

46. On September 4th, 2018, more than 29 months after having received the Appellant schools' policies, Alberta Education began sending the Appellant schools emails providing some feedback on their policies, thus triggering the 30-day deadline and the threatened consequences of "funding implications" and "suspension or cancellation of accreditation or any other order the Minister deems appropriate."[73]

II. GROUNDS OF APPEAL

47. The lower court erred in dismissing the Application for injunctive relief as follows:

Secrecy Provisions

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[70] Affidavit of Michelle Gusdal, sworn April 16, 2018 ("Gusdal April Affidavit"), at Ex A.
[71] Affidavit of Michelle Gusdal, sworn September 6, 2018 ("Gusdal Sept. Affidavit"), at Ex A [emphasis added].
[72] Ibid.
[73] Gusdal Sept. Affidavit at Exs B, C, D, E and F.

a. Failing to order a stay of the Secrecy Provisions pending determination of their constitutionality, given their demonstrable risk to child safety;
b. Finding that requiring schools to withhold critical information from all parents, regardless of the child's age or disability, does not establish irreparable harm to the constitutional rights and security of children and parents;
c. Finding that the balance of convenience is on the side of the Respondent, as opposed to parents and children, in keeping the Secrecy Provisions in place pending trial, thereby jeopardizing child safety across the province;
d. Ignoring or failing to address the oral and written arguments of the Appellants regarding the legal doctrine governing mature minors;

Rejection of Evidence

e. Erring in law and in fact by rejecting, entirely and without credible reason, the expert evidence of harm that may result to young or vulnerable children who are exposed to unscientific "gender identity theories" in the absence of parental oversight, as explained in the Affidavits of Dr. Grossman and Dr. Van Meter;
f. Erring in law and fact by finding that the harm described in the Affidavits of P.T. and J.P, and others was "anecdotal" in nature, and impermissible hearsay; **Defunding Schools**
g. erring in law and in fact by refusing to grant injunctive relief to prevent the Respondent from taking punitive steps against the Appellant schools for asserting their Charter rights and freedoms until the constitutionality of the Secrecy Provisions have been determined;
h. committing a palpable and overriding error by deciding that there was no immediate risk to school's funding or accreditation;
i. erring in law in determining that the case of *Law Society of British Columbia v. Trinity Western University*[74] supports jeopardizing child safety as in the instant case.

Section 16.1(1) "Immediacy Provision"

j. erring in law in finding that there is no serious constitutional issue raised by section 16.1(1)(a) of the *School Act* in light of the filed materials of the Appellants at the lower court.

III. STANDARD OF REVIEW

[74] 2018 SCC 32 (the "TWU Decision"), BOA, Vol. 2, TAB 12.

48. The Appellants state that the errors in law listed above are reviewable on a standard of correctness.[75] The errors of fact listed above are reviewable on a standard of palpable and overriding error.[76]

IV. ARGUMENT

Test for Injunctive Relief

49. The Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*[77] established the tripartite test for injunctive relief: (1) a serious issue to be tried, (2) if irreparable harm would result to the Applicants if the injunction is not granted, and (3) if the balance of convenience between the parties favours granting the injunction to the Applicants.[78]

Serious issue to be tried

50. The lower court correctly found that the *Charter* section 7 rights of parents were engaged; there is a serious issue to be tried.[79]

Irreparable Harm

51. According to the Supreme Court of Canada, "[t]he 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."[80] The Court has consistently affirmed the fundamental importance of parents' interests in nurturing and caring for their children:

> 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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> 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.... **[O]ur 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**

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[75] See *Housen v. Nikolaisen*, 2002 SCC 33, 2002 [*Housen*] at paras. 33-35, BOA, Vol. 1, TAB 8.
[76] [*Housen*] at paras 8, 10, 25, BOA, Vol. 1, TAB 8.
[77] [1994] 1 SCR 311, 1994 CarswellQue 120 ("*RJR-Macdonald*"), BOA, Vol. 3, TAB 28.
[78] Also see generally, *Harper v. Canada (Attorney General)*, [2000] 2 SCR 764. BOA, Vol. 1, TAB 6.
[79] Decision para 18. The court in essence made the same finding, although it did not specifically say so, in regard to the conflict between the Secrecy Provisions and the right of parents under the *Alberta Bill of Rights* "to make informed decisions respecting the education of their children" (section 1(g)), BOA Vol. 2, TAB 17.
[80] *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315, 1995 CarswellOnt 105 [*B.R.*], at paras. 83, BOA, Vol. 1, TAB 2.

> **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*.[81]

52. The rights of children to life and security are protected via their right to have their parents appropriately informed and enabled to provide necessary support and protection.[82] The younger or more vulnerable the child, the more fundamental is their reliance on their parents' ability to protect and assist them. According to the Supreme Court, this vital link between parent and child may **only be interfered with on a case by case basis when "necessity" is demonstrated, and it is justified in doing so.**

53. In contrast, the lower court Decision claims, without any basis in law and without reference to any facts, that "the *Charter* rights of parents" are in "direct conflict with the *Charter* rights of children, and in particular, those rights to free expression, association, life, liberty, security, and equality".[83]

54. It is a serious error in law, and a grave disservice to children[84] and families, for the lower court to justify its decision not to stay the Secrecy Provisions by reference to some unsubstantiated general and undefined conflict between the rights of all children and their parents. No facts are referred to explain the lower court's assertion of a province-wide, parental-child conflict of rights. No reference or findings are made as to "necessity", as set out in *B.R.*

55. The lower court refused or failed to properly consider the arguments before it about the *School Act*'s failure to make distinction between young children and post-puberty children, or children with autism or other physical or cognitive disability, and healthy, well-adjusted post-pubescent children.[85] Despite these arguments being the stated foundation of the Appellants' oral submissions at the lower court,[86] and a significant part of their written submissions,[87] the

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[81] *Ibid* at paras 83, 85 [emphasis added], BOA, Vol. 1, TAB 2.
[82] *C.P.L., Re*, 1988 CanLII 5490 (NL SC), at paras 76-80, 87-88 and 97, BOA, Vol. 1, TAB 11: "Almost secretively the Director was contacted, consent obtained and the operation performed. This effectively kept the parents out of the picture. In this case it was not what was actually done but how it was done, which was the denial of the child's rights. As I have already stated the medical treatment for the child was appropriate and performed in an expert manner. **The child was still denied his right to be informed through his parents.** I find the apprehension and detention of C.P.L. was not in accordance with fundamental principles of justice." [Emphasis Added]
[83] Decision at para 18, BOA Vol. 2, TAB 17.
[84] The generalization is particularly egregious not only for its general breadth but for applying the claim equally to all ages of children.
[85] PT Affidavit, EXTRACTS, Vol. 5, TAB 118; see also AA Affidavit; *Littman Study* at p 10.
[86] Hearing Transcript at 23:25-26:35, 27:4-14, 33:15-21, 38:5-7, 41:9-11, 43:30-44:3, Appeal Record, PART III.
[87] Applicants' Reply Brief at paras 10-16, 19-20.

Decision makes no mention of them. The Decision also ignores the extensive arguments regarding mature minors.[88]

56. This Court has held:

> The repute of the administration of justice depends in the end on litigants having confidence in and respect for the decisions that affect their rights...**It is imperative** that the litigants feel that they were fairly dealt with, **that their arguments and evidence were considered**...[89]

57. A 2018 report detailing incidents of child sexual abuse of K-12 children by school staff in Canada was also in evidence at the lower court, and ignored.[90] According to the study, abusing staff included "educational assistants, custodians, school bus drivers, student teachers, principals and vice principals, guidance counselors, support staff, and school volunteers."[91] Given the documented risk of predation at schools by staff and volunteers, it is unjustifiable to create a space whereat it is illegal, and it is known by would-be abusers to be illegal, to inform parents as to what transpires with small and vulnerable children. According to the report, grooming was also identified in 70% of the cases."[92] Grooming involves "manipulating the perceptions of children and adults around children to gain their trust and cooperation." It "normalizes inappropriate behavior through desensitization to reduce the likelihood that a child will disclose, and to reduce the likelihood that a child will be believed if they do tell." Disregarding facts, such as the foregoing, tainted the analysis of the issue of irreparable harm.[93]

58. The evidence in the record reveals that leaders of GSAs have unique access and relationships with children[94] as they participate in regular meetings discussing children's sexuality,[95] off campus meetings and events,[96] viewing of highly sexualized movies[97] and visiting the homes of GSA leaders.[98]

59. Finally, the Appellants also note that, in its assessment of irreparable harm caused by the

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[88] Due to space constraints in this Appeal Factum, please see Reply Brief of the Applicants at the lower court, paras. 8-16, 28, 29, 39 and 111.
[89] *University of Alberta v. Chang*, 2012 ABCA 324 *at para* 20, BOA, Vol. 3, TAB 29.
[90] Canadian Centre for Child Protection Inc. (2018): The Prevalence of Sexual Abuse by K-12 School Personnel in Canada, 1997–2017, Journal of Child Sexual Abuse, [EKE TAB, Reply Brief at the lower court, Tab 1] also accessible at https://doi.org/10.1080/10538712.2018.1477218.
91 Ibid at p. 5.
92 Ibid at p. 10.
[93] See Affidavits of AA, PT, *Littman Study* at p. 10.
[94] See e.g. Affidavit of Donald Stacey at para 8, EXTRACTS, Vol. 3, TAB 96.
[95] PT Affidavit at paras 22-23, 27, 36-37, EXTRACTS, Vol. 5, TAB 118; Affidavit of JP at paras 8-9, 11, 14, 16, EXTRACTS, Vol. 2, TAB 20.
[96] Affidavit of Donald Stacey at paras 6, 10 and 14, EXTRACT, Vol. 3, TAB 96.
[97] Affidavit of Donald Stacey at paras 11-13, EXTRACTS, Vol. 3, TAB 96.
[98] Affidavit of Donald Stacey at para14, EXTRACTS, Vol. 3, TAB 96.

Secrecy Provisions, the lower court conflated the presumption "that validly enacted legislation serves the public good" with the analysis of irreparable harm,[99] thereby committing an error in law. The lower court relied on *Harper v Canada (Attorney General)*,[100] but failed to recognize that *Harper* dealt specifically with the balance of convenience. The presumption of public good from legislation only arises in assessing the balance of convenience (not the existence of irreparable harm).[101] The court stated: "It follows that **in assessing the balance of convenience**, the motions judge must proceed on **the assumption that the law … is directed to the public good** and serves a valid public purpose, absent evidence to the contrary.[102]

60. The lower court compounded its error of importing a presumption of public good to the irreparable harm analysis by assessing the claimed benefits of GSAs..[103] The analysis of irreparable harm refers to the nature of the harm suffered, not its relative magnitude, which is left to be assessed under the balance of convenience.[104] A violation of constitutionally protected fundamental *Charter* rights results in irreparable harm.[105] Infringing the section 7 rights of children and parents is not compensable with money.

Balance of Convenience

61. In its balance of convenience analysis, the lower court erred in law by failing to consider or even mention the disproportionate risk to younger children and disabled children imposed by the Secrecy Provisions. This omission taints the analysis. It is not in the public interest to threaten the safety of elementary school-age children in Alberta on the basis that some older same-sex attracted teens might not receive the support they need at home if their parents find

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[99] Decision 34-38, BOA, Vol. 2, TAB 17. At paragraph 5 of its Decision, the lower court states that "[t]his presumption [public good arising from maintaining the law] is considered as part of the irreparable harm analysis."
[100] 2000 SCC 57, BOA, Vol. 1, TAB 6.
[101] Ibid at para 5: "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." BOA, Vol. 1, TAB 6.
[102] Ibid at para 9; see also para 11, BOA, Vol. 1, TAB 6.
[103] Decision at para 35-37, BOA, Vol. 2, TAB 17.
[104] *RJR-Macdonald* at para 64, BOA, Vol. 3, TAB 28: "'Irreparable' refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other"; see also *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459 [*NCCM 2017*] at para 31, BOA, Vol. 2, TAB 15.
[105] *Tabah* v. *Québec (Procureur général)*, [1994] 2 SCR 339, 1994 CarswellQue 84, at p 380-382. paras 14,18, and 22, BOA, Vol. 1, TAB 1: "If it is found that the respondents are correct and that the searches and seizures were unconstitutional, then the privacy right will have effectively been lost as a result of the unconstitutional provisions of the Act. Small as it may be, there is such a privacy interest. If it transpires that the respondents are correct in their constitutional contention, then I would think that the loss of that privacy interest would, in itself, constitute irreparable harm."; *National Council of Canadian Muslims (NCCM) c Attorney General of Quebec,* 2018 QCCS 2766 [*NCCM 2018*] at para 29, BOA, Vol. 2, TAB 16.

out they attended a GSA. The Respondent has no "monopoly on the public interest",[106] either.

62. The Appellants note that section 16.1 of the *School Act* was enacted in March of 2015 as *Bill 10: An Act to Amend the Alberta Bill of Rights to Protect our Children.* The title of legislation provides key insight into its purpose.[107] A central aspect of Bill 10, which required schools to establish GSAs if requested by one student, was its amendment of the *Alberta Bill of Rights* to establish a clear and paramount guarantee of "the right of parents to make informed decisions respecting the education of their children."[108] Such a right **necessarily** requires properly informing parents, as a condition of its exercise. Later, the Secrecy Provisions were enacted via *Bill 24: An Act to support Gay-Straight Alliances.* Bill 10 had protecting children as its focus; Bill 24's focus was clubs and activities taking place in secret.

63. The *Alberta Bill of Rights* supersedes the *School Act* in the event of a conflict.[109] In codifying parental rights to educate, the Legislature effectively created a safeguard against the very kind of misuse of the legislative power that occurred later with Bill 24.

64. GSAs existed before the Secrecy Provisions and there is no real evidence to show that they would cease to exist if the Secrecy Provisions were temporarily stayed.[110] There is nothing in the evidence to justify the extraordinarily broad infringement of section 7 rights across the province, which can only be infringed on a case by case basis, as demonstrably provable when absolutely necessary. Staying the Secrecy Provisions would not impact any of the alleged positive effects of GSAs in public schools.[111]

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[106] *RJR-Macdonald* at para 70, BOA, Vol. 3, TAB 28; see also *NCCM 2017* and *NCCM 2018*, where the Quebec Superior Court has issued two decisions finding that the public interest weighed in favour of the applicants, not the government, and staying the impugned provisions pending a determination of their constitutionality.

[107] *NCCM 2017* at paras 46-47, BOA Vol. 2, TAB 15.

[108] See Bill 10, section (2)(b), BOA, Vol. 3, TAB 32; see also *Alberta Bill of Rights,* section 1(g), BOA, Vol. 3, TAB 31.

[109] See *Alberta Bill of Rights*, section 2, BOA, Vol. 3, TAB 31.

[110] The lower court's finding at paragraph 41 that a stay "would result in … the loss of supportive GSAs" is not compelling. was in apparent reference to the entire "legislation" and not specifically to the Parental Provisions. A stay of the Secrecy Provisions (prohibiting parental notification) has no effect on whether GSAs are permitted to remain in any schools.

[111] The studies relied on concerning the GSAs only studied their effects in relation to nearly exclusively teenage students in public schools, to the exclusion of younger children. See Alderson Affidavit at para 9, referencing *Taylor et al Study* attached to it as Exhibit B, EXTRACT, Vol. 1, TAB 3: average age of respondents was 17.4 years (range of 13 to 21), which did not have enough participants from Catholic schools to make findings (p 132); Alderson Affidavit at para 21, referencing the Saewyc et al Study attached to it as Exhibit C, EXTRACT, Vol. TAB 4, which focused on students in grades 8 through 12 and analyzed the 2008 B.C. Adolescent Health Survey, which "[f]or administrative reasons, **alternative and independent schools were not included** in the 2008 survey." A picture of health: Highlights from the 2008 BC Adolescent Health Survey, at p 9 (emphasis added] available online at http://www.mcs.bc.ca/pdf/AHSIV_APictureOfHealth.pdf; Alderson Affidavit at para 24, referencing the *Kitchen and Bellini Study*, attached to it as Exhibit D, which recounted responses from adults working with GSAs (who "viewed themselves as being more of an activist than their colleagues" p 25) primarily in secondary schools with only two responses relating to middle schools in Ontario (grades 6-8 or 9) completed prior to Bill 13's requirement for GSAs in Ontario's public and Catholic schools; Alderson Affidavit at para 31, referencing the *Poteat et al Study* attached to it

65. Further, current statutory provisions already guide schools' disclosure of information, subject to the *Charter* and the *Alberta Bill of Rights*, including information to students' parents, and *already prevent disclosure of information to parents* when certain criteria are met.[112] The Respondent has not demonstrated that these pre-existing provisions were failing students, or that pre-existing provisions resulted in students being involuntarily outed to their parents by school authorities. In its materials before the lower court, the Respondent even claimed that Bill 24 had not changed the existing law regarding parental notification.[113]

66. The lower court erred in law by failing to recognized that a stay of the Secrecy Provisions would not violate the appropriate privacy interests of mature minors, which were already protected prior to the passage of Bill 24. Rather, a stay would permit appropriate disclosure to parents where such disclosure is not an unreasonable invasion of privacy, or where the minor lacks the ability to understand the nature and consequences related to the disclosure.[114]

67. Finally, the Secrecy Provisions interfere with parent-child relationships that are essential for the well-being of LGBTQ+ children, and do so in all cases, including cases where not informing parents would harm children.[115]

68. For the reasons herein, including the New Evidence, and those reasons set out before the lower court, the Appellants submit that the test for a stay is met pending a determination of the Secrecy Provisions' constitutionality.[116]

Rejection of Evidence

69. The lower court erred in law in rejecting the evidence of the experts, Drs. Grossman and Van Meter. The lower court pointed to no legitimate issue with the experts' credentials or standing in the medical community. The legitimacy of their medical opinions is borne out

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as Exhibit E, which analyzed a survey of students in "public middle schools and high schools" in a U.S. county (*Poteat et al* at p 322).

[112] The Respondent asserts that the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 ("*FOIP*"); *Personal Information Protection Act*, RSA 2003, c P-6.5 ("*PIPA*") apply to public and private schools, respectively. BOA, Vol 3, TAB 34.

[113] FOIP and PIPA have to be interpreted in light of the *Constitution* and the *Alberta Bill of Rights*. The Appellants assert that neither FOIP nor PIPA create a conflict of rights between a parent and their child.

[114] These provisions must be applied in light of the *Alberta Bill of Rights*' guarantee of parents' right to make informed decisions concerning their children. Section 1(g).

[115] See Ng Affidavit at Exhibit Y, Veale J, Saewyc E, Frohard-Dourlent H, Dobson S, Clark B & the Canadian Trans Youth Health Survey Research Group (2015), EXTRACTS Vol. 3, TAB 73. Being Safe, Being Me: Results of the Canadian Trans Youth Health Survey. Vancouver, BC: Stigma and Resilience Among Vulnerable Youth Centre, School of Nursing, University of British Columbia [*Tran Youth Health Survey*] at pp 2-3, and *Littman Study*; see also *Winnipeg Child & Family Services (Central Area) v W.(K.L.)*, 2000 SCC 48 at para 72, BOA, Vol. 3, TAB 30: "The mutual bond of love and support between parents and their children is a crucial one and deserves great respect. Unnecessary disruptions of this bond by the state have the potential to cause significant trauma to both the parent and the child."

[116] NCCM 2018 at para 32, BOA, Vol. 2, TAB 16.

by the experiences of JP and AA, and the *Littman Study*. The reasons provided by the lower court for its rejection of this evidence are seriously flawed.[117]

70. With respect, the lower court did a disservice to itself and to the litigants when it relied on majoritarian views, as expressed in legislation (such as human rights acts) and certain policies of medical associations, as a sole or primary determinant in arriving at facts and truth. Canadian history sadly bears out that children, and our society, can be irreparably harmed by ideas upheld by majoritarian sentiments, laws and even good intentions.[118]

71. Similarly, the lower court's rejection of the affidavit evidence of PT and JP, containing their observations of their respective daughters, and their conversations with them, was an error of law.. There is nothing to suggest that the Affidavits of PT and JP are not accurate and reliable, or relevant to the Secrecy Provisions prohibiting the sharing of information with parents. [119] The Respondent chose not to cross examine either Affiant, claiming at the hearing before the lower court that it did not have the resources to do so.[120]

72. This case deals with the welfare of children, and "all evidence which bears on what is in the best interest of the child should be before the Court."[121]

Risk of Defunding and De-Accreditation

73. The Respondent is publicly and privately threatening to defund and de-accredit the Appellant schools unless they comply with the entirety of the *School Act*, including the Secrecy Provisions.[122]

74. Absent a full and substantive hearing on the constitutionality of the Secrecy Provisions,

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[117] It is not possible to include further written details on this point due to space constraints, but the Appellants intend to argue this issue at the hearing of this Appeal.

[118] See Affidavit of Mavis Giant at paras 31-33; see also Truth and Reconciliation Commission: Calls to Action attached as Exhibit "C", EXTRACTS, Vol. 1, TAB 17.

[119] Decision at para 28, BOA, Vol. 2, TAB 17. The evidence of JP and PT is not "anecdotal" – they live with their daughters and have first hand knowledge of them. The lower court accepted similar evidence at para. 36 tendered by the Crown without hesitation – see para. 36.

[120] Hearing Transcript, at 54:18-24, Appeal Record, PART III: The Assistant to the Deputy Minister of Education during Questioning conceded that the*School Act* establishes no parameters or safeguards regarding the materials which may be used at a GSA, or in regard to the age of the child that may be exposed to materials without parental consent. Transcript of Questioning of Wendy Boje, held June 15, 2018, at 78:21-24, 83:10-18, EXTRACTs, Vol. 5, TAB 114.

[121] *Horse v. Wapass*, 2002 SKCA 78, 2002 CarswellSask 381 (Sask. C.A.) at para 8, BOA, Vol. 1, TAB 7; see *L. (B.) v. Saskatchewan (Ministry of Social Services)*, 2012 SKCA 38, 2012 CarswellSask 232 at para 71, BOA, Vol. 1, TAB 9: "The overarching principle, however, is that a court has all the necessary authority to receive further evidence in the best interests of the child."; see also, *Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)*, [1994] 2 S.C.R. 165 (S.C.C.) quoting with emphasis *G. (A.), Re* (1985), 53 O.R. (2d) 163 (Ont. C.A.) at pp 164-65, BOA, Vol. 1, TAB 3: "The judge on appeal, bearing in mind that he is dealing with the welfare of children, may determine that he will exercise his discretion and will hear further evidence so long as it is relevant to a consideration of the best interests of the child."

[122] Affidavit of Michelle Gusdal, sworn April 16, 2018, at Ex A; Affidavit of Michelle Gusdal, sworn September 6, 2018, at Exs A, B, C, D, E and F.

the Appellant schools cannot agree to comply with the *School Act* without becoming an agent of the government and its unconstitutional and reckless undermining of child safety and parental rights.

75. The Appellant schools are in a relationship of trust with parents, many of whom share the same religious values, including the solemn belief that parents have been entrusted by God to raise their children in accordance with divine requirements, including certain moral obligations and teachings.[123] During the day, schools care for and educate children at the behest of parents who trust the schools to educate in accordance with commonly-held values, and who have a right to know specifically about what sexual or ideological content their children might be exposed to, and by whom, and under what circumstances. It is nothing short of tyrannical for the Government of Alberta to attempt to compel the Appellant schools to jeopardize child safety by interfering with the vital link between parents and children, absent demonstrable necessity on a case-by-case basis.

76. In light of the all of the evidence that was placed before the lower court, particularly the evidence of serious risk to young and vulnerable children, the lower court erred in law by enabling the Government of Alberta to make the Appellant schools complicit in an act of irreparable harm against children and families. Further, irreparable harm will result to the Appellant schools if they continue to assert their constitutional and legislative rights without the assistance of the courts. Not only will the Appellant schools lose funding and accreditation, but they will betray the trust of families.[124]

77. The Government Alberta acts as though the *School Act* were a law unto itself, and as though it were neither accountable to the rule of law or to the courts. This is not so. The *School Act* must be read in accordance with the section 52 of the Constitution Act, 1982, and sections 2, 7, 24(1) and 32 of the *Charter*, as well as the *Alberta Bill of Rights.*

78. The Government of Alberta's authoritarian stance against the Appellant schools will result in irreparable harm to the constitutional and legislative rights of children and parents, not to mention the schools' very existence as accredited schools in Alberta.

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[123] The Respondent is also unwilling to permit the Appellant Schools' policies to reference their belief that their holy texts are "truth", reference their belief that people are created male and female, reference their beliefs concerning marriage and sexual activity; , reference their belief that they are accountable to adhere to what they believe to be God's commands; and reference the need to evaluate student requests on whether they promote the values, principles, mission and vision of the school or that student groups are required by name and action to reflect the beliefs of the School. See Ex B, C, D, E and F.

[124] See eg Affidavit of Paul Neels, sworn April 27, 2018, at paras 16-18, EXTRACTS, Vol. 2, TAB 44.

79. The thousands of children, families and staff that have chosen the Appellant Schools will be irreparably harmed in the event these schools are defunded or de-accredited, and child security jeopardized, especially with the 2018-19 school year now being well under way. In light of public interest supporting parents' educational choices for their children and in maintaining the *status quo*, and the exceptionally safe and caring nature of the Appellant Schools,[125] the balance of convenience favours granting injunctive relief to prevent the Respondent from de-funding or de-accrediting the Appellants Schools pending the determination of the constitutionality of the Secrecy Provisions. The Appellants submit that the lower court erred in determining that the Appellants have not met the tripartite test for an injunction preventing the Respondent from taking punitive action against them (including defunding and de-accreditation) pending a proper constitutional determination of the issues in this litigation.

Risk of Defunding and De-Accreditation

80. In light of the serious problems with the Secrecy Provisions, the Appellants submit that the lower court erred in law in determining that there was no constitutional issue to be tried in regard to the Immediacy Provision in section 16.1(1).

V. RELIEF SOUGHT

81. The Appellants request the relief sought at paragraph 5 of the Notice of Appeal, and an Order that the lower court erred in disregarding the evidence of Drs. Grossman and Van Meter, and the affidavits of PT and JP, without lawful justification.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th Day of September:

for _____

JAY CAMERON and MARTY MOORE

Time Limit Applies
The maximum time limit for oral argument is 45 minutes.

[125] The Appellant Schools consistently rank exceptionally high as "safe and caring" schools in the Respondent's annual surveys of students, parents and staff: see e.g. Affidavit of Keith Penner, at para 14, EXTRACTS, Vol. 3, TAB 80; Affidavit of Jordan Tiggelaar, at para 18, EXTRACTS, Vol. 4, TAB 100; Affidavit of Cameron Oke, at para 20, EXTRACTS, Vol. 3, TAB 74; Meldrum Affidavit, at para 21, EXTRACTS, Vol. 2, TAB 25; Affidavit of Simon Faber, at para 23, EXTRACTS, Vol. 5, TAB 119.