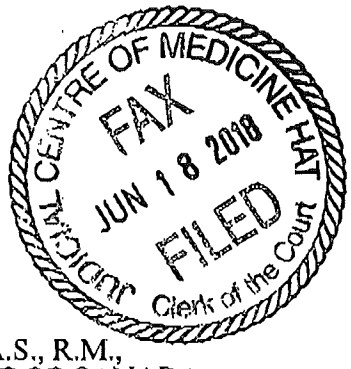
Clerk's Stamp



COURT FILE NUMBER	1808-00144
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	MEDICINE 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	**REPLY BRIEF OF THE APPLICANT**

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: SUMMARY

1. This Reply Brief is in response to the Respondent's Brief filed May 25, 2018.

2. The Respondent's opposition to the Applications for injunctive relief can be summarized as follows:

   a. The infringement of parental rights through the legislated restriction of information as in sections 16.1, 45.1(4)(c)(i) and 50.1(4) of the Alberta *School Act,* is not new, and therefore it is lawful; the Alberta *Freedom of Information and Protection of Privacy Act* (*FOIP*) and the *Personal Information Protection Act* (*PIPA*) "protect minor's privacy and are paramount over other legislation in the case of conflict" "(Respondent's Brief, para. 25);

   b. GSAs are benign and beneficial: they do not expose children to sexually suggestive or pornographic material,[1], but simply create safe spaces for children who may be different and need a safe space;

   c. Because GSAs are beneficial it is lawful to "limit" the information that schools may communicate about them, including what materials are being utilized, which children and which adults are attending, and what activities are taking place;

   d. Broadly, that the Applicants have not met the test for injunctive relief.

3. It is important to note that the Respondent has not responded to all of the relief sought in the Application for injunctive relief before the Court. Among the issues the Respondent has not responded to are the requests to stay the following sections in the *School Act* pending a hearing as to their constitutionality:

   a. Section 45.1(3)(a), which compels the Applicant independent schools to file policies affirming *Charter* rights for their employees, when the *Canadian Charter of Rights and Freedoms* only binds government pursuant to section 32 of the *Charter*;

   b. Section 45.1(3)(b), which undermines the right of the Applicant independent schools to hire only staff who support the school's values and vision, by requiring schools to affirm that employees will not be discriminated against under any ground in the

[1] Respondent's Brief, para. 2.

Charter, which violates the *Charter* (section 32) precept that the *Charter* applies only to the actions of government, not to private bodies such as the Applicant independent schools; and

c. Section 45.1(4)(4)(a)(ii), which prevents the Applicant independent schools from passing a "code of conduct" which requires the principal to consult the school board prior to "immediately" establishing a section 16.1 clubs such as a GSA.

4. The Applicants note the Respondent has filed no argument in response to the Application for injunctive relief (filed April 27, 2018) to prevent the Respondent from "taking any action to defund or de-accredit or otherwise penalize or disadvantage the Applicant schools in relation" to the Annual Declaration (formerly the Annual Operating Plan) due for submission on June 30, 2018. The Respondent has filed the June 11, 2018 Affidavit of Wendy Boje, Assistant to the Deputy Minister of Strategic Services and Governance division of Alberta Education. The Affidavit of Ms. Boje does not address the substance of the April 27, 2018 Application for injunctive relief. This issue is further addressed below.

PART 2: REPLY TO THE RESPONDENT'S ARGUMENTS

A: *FOIP* and *PIPA* already restrict parental rights, therefore injunctive relief does nothing

5. The Respondent claims that Bill 24's amendments to the *School Act* did not change the legislative landscape in regard to parental rights to information, and merely duplicated the restrictions on parents already found in *FOIP* and *PIPA*.[2] The Respondent claims that even if the Impugned Provisions were stayed pending trial, that *FOIP* and *PIPA* cover the same ground as *School Act* sections 16.1, 45.1(4)(c)(i) and 50.1(4) (which require a school to restrict parental knowledge of all children in regard to GSAs). Therefore, according to the Respondent, an injunction staying sections 16.1, 45.1(4)(c)(i) and 50.1(4) does nothing to ensure parental access to knowledge about their children (in the intervening time that it takes this matter to be heard on the merits).

6. This is inaccurate, and mischaracterizes *FOIP* and *PIPA*.

[2] Respondent's Brief para. 3, 27, 29-32.

7. The Respondent relies on three decisions of the Office of the Information and Privacy Commissioner of Alberta ("OIPC") supposedly "affirming minors' privacy relative to their parents" under *FOIP* or *PIPA* (Brief of the Respondent, paras. 34 and 35). Apart from decisions of the OIPC, which is not a court of law, the Respondent has provided no authority for its theories regarding the interpretation of *FOIP* and *PIPA*.

8. The first decision the Respondent relies on is Order F2005-017; Calgary Health Region (Re) ("F2005"). In this case, psychological records of a mature minor were requested from the Calgary Health Region by one of the girl's parents. The parents were going through a custody battle. The daughter was reported to have had repeated episodes of prolonged rage, with no memory of the incidents thereafter.[3] A series of mental health exams of the daughter occurred. The mother had applied for the answers given by the daughter in some follow-up questionnaires, which were the records that the mother applied to the Calgary Health Region for.[4]

9. The request for medical records in F2005 was made under the *Hospital Insurance Act* (the "*HIA*"), and the case was decided under the *HIA*, not *FOIP.* In her Application for her daughter's records, the mother relied on section 104 of the *HIA.* As the OIPC stated,

> Section 104(1)(b) of the *HIA* authorizes individuals who are under 18 years of age and who understand the right or power and the consequences of exercising the right or power, to exercise their own rights or powers. Where individuals are under 18 years of age but do not understand the nature and consequences of exercising their own rights or powers, section 104(1)(c) of the HIA authorizes the guardian of the minor to exercise the individual's rights or powers.[5]

10. The minor in F2005 was 15 and ½ years old when the request was made, and had already been living independently from her mother for over two years at the time the request was made. She was 17 when the Calgary Health Region made further submissions refusing the release of the daughter's records.[6] In its decision, the OIPC found that the mother had failed to prove that her daughter was not able to "understand the nature of the right or power and the consequences of exercising the right or power", and therefore the mother

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[3] F2005, paras. 19, 20. [TAB 7 of the Respondent's Book of Authorities]
[4] F2005, para. 20.
[5] F2005, para. 28.
[6] F2005, para. 17, 66.

had not established a right to the records under section 104(1)(c) of the *HIA*. This ratio fails to support any of the Respondent's arguments.

11. There are some important takeaways from the decision in F2005, however.

12. The first is the recognition by the OIPC of the concept of the "mature minor", and the rights which accrue to a child gradually, and only when he or she has demonstrably reached this stage of life. The daughter in F2005 was a mature minor (15 ½ at the time of the request for records) and had been living independently apart from her mother when the request for the records was made.[7] The OIPC considered the results of her psychological profile in determining that she was strong-willed and independent. The OIPC canvassed the pertinent legislation in Canada regarding mature minors, and found that the three provincial jurisdictions "with private sector privacy legislation in Canada (Alberta, BC, Quebec) give **mature minors** the right to exercise their own personal information rights and powers", and that this right "explicitly arose at the age of 14 years in Quebec."[8] [Emphasis added]

13. Second, the case law cited by the OIPC shows that the determination of whether a child is mature enough to personally consent to treatment, for example, is a subjective one to be determined on a case-by-case basis by a doctor, or if necessary by a court.[9] There is no right to withhold information from parents across the board. The legal test is not the "chronology of age" but rather "whether a child is capable of understanding the nature and consequences of a treatment decision."[10] To suggest that F2005 somehow supports withholding information from parents about their young children is disingenuous.

14. Third, according to the OIPC, the "cardinal common law case" on consent to treatment is the House of Lord's decision in *Gillick v. West Norfolk and Wisbech Area Health Authority*.[11] According to the OIPC's analysis of *Gillick*, "the parental right to decide ends when the child achieves the legal capacity to consent to treatment."[12] According to Lord

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[7] F2005, para. 66.
[8] F2005, para. 56. [Emphasis added]
[9] F2005, para. 38, citing Justices Ellen Picard and Gerald Robertson, Legal Liability of Doctors and Hospitals in Canada, 3d ed., 1996, pp.71-73.
[10] F2005, para. 39, citing Lorne Rozovsky, the Canadian Law of Consent to Treatment, 3d ed., 2003, p. 8-9.
[11] [1985] 3 All ER 402 (HL) ("*Gillick*").
[12] *Gillick*, para. 40.

Denning in *Gillick*, the parental right starts with "a right of control and ends with little more than advice."[13]

15. Contrary to the Respondent's claim, F2005 does not evidence any blanket privacy right of minors against their parents. Neither does the *HIA* or *PIPA* or *FOIP*. Rather, F2005 recognizes a right of mature minors, determined on a case-by-case basis, to have a privacy interest under the *HIA*. F2005 alludes to similar provisions in *FOIP* and *PIPA* that also depend on the demonstrable maturity of a particular child. By contrast, the *School Act* now requires *all* schools in the province to restrict information regarding GSAs *irrespective* of the age of the child, whether she is five or 17 or somewhere in between.

16. There is nothing in the Impugned Sections of the *School Act* to distinguish between minor and mature minors, between a child of five or a child of seventeen. This failing of the legislation disproportionately creates a risk for younger children and is one of the primary concerns of the Applicants.

17. The second decision of the OIPC that the Respondent relies on is Order F2006-006; *Calgary and Area Child and Family Services Authority (Re)*[14]("F2006"). F2006 dealt with a father's request for the agency's entire file about his minor son, made following interviews between the child protection agency and his son after reports that his son "may be in need of intervention or protective services." The OIPC "disclosed much of the file"[15] but withheld certain information under section 17 of *FOIP*, finding that the release of the information would "constitute an unreasonable invasion of the personal privacy of a third party and therefore must not be disclosed to the Applicant."[16] The public body in this case found that when it was interviewing the child, in the context of a child in need of intervention or protective services, some of that conversation should remain private.

18. F2006 does not stand for the proposition asserted by the Respondent, namely that the *School Act "*highlights" for children their rights under *FOIP*.[17] The Impugned Sections makes no mention of *FOIP,* or *PIPA,* for that matter.[18] Further, the Respondent ignores

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[13] F2005, para. 41, quoting *Gillick*, p. 369.
[14] [2008] A.I.P.C.D. No. 31 ("F2006")
[15] *Ibid*, p. 1.
[16] *Ibid*, para. 134.
[17] Respondent's Brief, para. 36.
[18] The *School Act* makes no mention of *PIPA* whatsoever. The *School Act*, section 79(b), states that the Minister of Education may make regulations **consistent** with *FOIP*.

the substantial disclosure which did occur in this case. The parent in F2006 was aware of a meeting that had taken place between his son and the agency in question. The parent was provided with 88 pages of information from the agency's file.[19] In F2006, the public body did not attempt to keep secret from parents the fact that the meeting with the child occurred, which is different from the new *School Act* requirements to keep secret from parents their own children's exposure to GSA clubs and activities, and their own children's meetings with adult strangers. The OIPC does not disclose the age of the child in question. The case was not appealed.

19. The Respondent is effectively arguing that all schools in Alberta, both public and private, should withhold *all* information about *all* minors (regardless of maturity) from *all* parents, unless the information sought by a parent can be shown to fall within one of the enumerated exceptions in the *FOIP* or *PIPA* legislation.[20]

20. This interpretation of *FOIP* and *PIPA*, which forms the foundation of the Respondent's arguments, is incorrect. The Respondent's misinterpretation of *FOIP* and *PIPA* ignores the qualified and nuanced jurisprudence which finds that a parent's right to know about their own children should be restricted as little as necessary, and only on a case-by-case basis.[21] On this point, the Supreme Court of Canada stated:

> While parents bear responsibilities toward their children, they must enjoy correlative rights to exercise them, given the fundamental importance of choice and personal autonomy in our society. Although this liberty interest is not a parental right tantamount to a right of property in children, 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.** While the state may intervene when it considers it necessary to safeguard the child's autonomy or health, **such intervention must be justified.**
>
> While children undeniably benefit from the Charter, most notably in its protection of their rights to life and to the security of their person, they are unable to assert these

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[19] *Ibid*, para. 3.
[20] Brief of the Respondent at paras 27-29.
[21] See e.g. Order F2006-006: Calgary and Area Child and Family Services at para 100: "The ability of a guardian to exercise a right of access on behalf of a minor may be determined on a record-by-record basis."; Order F2009-033: "Applying this reasoning, it is proper for the Public Body to determine if the disclosure of the minor children's personal information in each individual record to the guardian would be an unreasonable invasion of the minor children's personal privacy." Also see

> rights, and our society accordingly presumes that parents will exercise their freedom of choice in a manner that does not offend the rights of their children. If one considers the multitude of decisions parents make daily, it is clear that in practice, state interference in order to balance the rights of parents and children will arise only in exceptional cases. **The state can properly intervene in situations where parental conduct falls below the socially acceptable threshold, but in doing so it is limiting the constitutional rights of parents rather then vindicating the constitutional rights of children.**[22]

21. The Respondent cites no decision from any court of competent jurisdiction for its claims regarding *FOIP* and *PIPA*. The Respondent's claims contradict the Supreme Court of Canada.

22. The third OIPC case relied on by the Respondent deals with a request by a parent for his "daughter's school counselling record."[23] Again, as in the other cases relied on by the Respondent, some of the information requested was provided, and the OIPC ordered that more be produced.[24] The OIPC acknowledged it had no jurisdiction to deal with the issue of the lack of parental consent for the counseling which occurred.[25] The OIPC's consideration of the *Family Law Act* is, it is respectfully submitted, neither accurate nor binding on this Honourable Court.[26]

23. Interestingly, the Calgary Sexual Health Centre (the "Centre"), which has applied to intervene in this matter, has never (according to its President and CEO Pamela Krause, who has been with the Centre for nearly two decades) had occasion to rely on either *PIPA* or *FOIP* in regard to a GSA.[27] In fact, the Centre actually contradicts the Respondent, arguing that if the Impugned Provisions of the *School Act* are suspended or struck down, "LGBTQ+ youth will find themselves … without any protection for their privacy."[28] The Centre says nothing about *FOIP* or *PIPA*.

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[22] *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315, 1995 CanLII 115 (SCC), p. 318. [emphasis added]
[23] Order F2012-21; High Prairie School Division No. 48 (Re), [2012] A.I.P.C.D. No 46. ("F2012")
[24] *Ibid*, paras. 4 and 66.
[25] *Ibid*, para. 25.
[26] The OIPC appears to interpret that s. 17 of *FOIP*, which states that information can be withheld when reasonable, should be interpreted as permitting the public body to refuse to disclose information that belongs to a child that is not a mature minor. This is not in keeping with other legislation in Alberta, or the FOIP legislation in other provinces.
[27] Transcript of Questioning of Pamela Krause, May 29, 2018, p. 8, lines 7-16.
[28] Brief of Argument in Support of Application to Intervene at para 32. The position of the Centre is also wrong at law, since the staying of the Impugned Provisions simply restores the status quo prior to the passage of Bill 24. Prior to Bill 24, schools were entrusted with appropriate discretion in serving the needs of children, including youth who

24. The position of the Centre is also wrong at law, since the staying of the Impugned Provisions simply restores the status quo prior to the passage of Bill 24. Prior to Bill 24, schools were entrusted with appropriate discretion in serving the needs of children, including youth who identify as LGBTQ. Further, the Centre's argument that "LGBTQ+ youth will find themselves without the support they need at school" without the Impugned Provisions ignores the wide-spread existence of GSAs prior to the passage of Bill 24.

25. According to the Respondent, a parent who calls their child's school for information about their child because (for example) the parent noticed some unusual behavior and wants to know who their seven-year-old child has been hanging out with, would have to fall within some recognized exception under *FOIP* or *PIPA* in order to get any information.[29] According to the Respondent, schools have an obligation to protect children's privacy rights from their own parents, irrespective of age. Not only is this interpretation of *FOIP* and *PIPA* incorrect, but if this reasoning was adopted by this Court, it would turn schools into the adversaries of parents, as opposed to their delegated agents. However, "[t]he law is clear that the authority of the state to educate children is a delegated authority" from parents.[30]

The Law's Presumption of Disclosure of Information to Parents

26. The law, however, *presumes* that parents will be informed as to their children and their activities and associations. The legal presumption under a number of binding sources (including the *Family Law Act*, the *Charter* and the *Albert Bill of Rights*) is for disclosing information to parents, not the withholding of information.

27. The Alberta *Family Law Act*, for example, contains the following provisions:

> 21(1) A guardian shall exercise the powers, **responsibilities and entitlements** of guardianship in the best interests of the child.
> 21(4) Except where otherwise limited by a parenting order, **each guardian is entitled**
> (a) **to be informed of and consulted about and to make all significant decisions affecting the child in the exercise of the powers and responsibilities of guardianship described in subsection (5)**, and
> (b) to have sufficient contact with the child to carry out those powers and responsibilities.

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identify as LGBTQ. Further, the Centre's argument that "LGBTQ+ youth will find themselves without the support they need at school" without the Impugned Provisions ignores the existence of GSAs prior to the passage of Bill 24.

[29] Brief of the Respondent, para. 32.

[30] See *E.T. v. Hamilton-Wentworth District School Board*, 2017 ONCA 893 at paras 67.

(5) Except where otherwise limited by law, including a parenting order, each guardian has the following **responsibilities** in respect of the child:

(a) to nurture the child's physical, psychological and emotional development and to guide the child towards independent adulthood;

(b) to ensure the child has the necessaries of life, including medical care, food, clothing and shelter.

(6) Except where otherwise limited by law, including a parenting order, each guardian may exercise the following powers:

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

(b) to decide the child's place of residence and to change the child's place of residence;

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

(d) **to make decisions regarding the child's cultural, linguistic, religious and spiritual upbringing and heritage;**

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

(f) to decide whether the child should work and, if so, the nature and extent of the work, for whom the work is to be done and related matters;

(g) **to consent to medical, dental and other health related treatment for the child;**

(h) to grant or refuse consent where consent of a parent or guardian is required by law in any application, approval, action, proceeding or other matter;

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

(j) subject to the Minors' Property Act and the Public Trustee Act, to commence, defend, compromise or settle any legal proceedings relating to the child and to compromise or settle any proceedings taken against the child;

(l) **to receive from third parties health, education or other information that may significantly affect the child;**

(m) **to exercise any other powers reasonably necessary to carry out the responsibilities of guardianship.**[31]

28. Consistent with the *HIA* and *PIPA* and the concept of "mature minors", the *Family Law Act* recognizes that the exercise of parental rights under subsection 6 must be done in "a manner consistent with the evolving capacity of the child."[32] Contrary to the blanket

[31] *Family Law Act, s. 21(1), (4)-(6).*
[32] *Family Law Act*, s. 21(7)

restriction of parental information in regard to GSAs and "activities" in the *School Act*, which applies irrespective of the age of the child in question, the *Family Law Act* rightly recognizes that what is appropriate for a five-year-old is different than what is appropriate for a 16-year-old. For younger children who are not mature minors, parents have sweeping rights (and responsibilities) under the law, including the ability to determine who the child associates with, and the child's participation in extra curricular activities. This includes the right to determine whether or not a child shall attend a GSA.

29. It should be noted that even the *School Act*, in its preamble (which existed prior to the challenged Impugned Sections enacted through Bill 24), states that "parents have a **right** and a **responsibility** to **make decisions respecting** the education of **their** children"[33][emphasis added]. Consistent with the concept of "mature minors", the only exception to the right of a parent to view their child's grades or tests, for example, is if the child is an "independent student" – a student who is either over 18 years of age, or 16 years of age and living independently.[34]

30. The Respondent would have this Court believe that young children are autonomous and independent, and have privacy rights vis-à-vis their parents at any age. This is wrong at law. Children, while not the property of parents, are the *responsibility* of their parents (or other legal guardians), who are broadly *entitled* to make decisions in regard to the child in their care. This responsibility is not truncated simply because a child is at school during the day, as the Respondent would have this Honourable Court to believe.

The Alberta Bill of Rights

31. Also absent from the legal analysis of the Respondent in regard to *FOIP* and *PIPA* (as well as the *School Act*) are the application of the *Alberta Bill of Rights* and the *Charter*. It would be an error in law to interpret *FOIP* and *PIPA* as the Respondent has proposed. This is especially so absent consideration of the impact of the *Constitution* and the *Alberta Bill of Rights*. *FOIP* and *PIPA* are subject to both, and so is the *School Act*.

32. The *Alberta Bill of Rights* states that, unless an enactment specifically says that it operates notwithstanding the *Alberta Bill of Rights*, all legislation must be "so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment

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[33] *School Act*, preamble.
[34] *School Act*, s. 1(1)(m)

or infringement of any of the rights or freedoms herein recognized and declared."[35] There are no paramountcy provisions in *FOIP* or *PIPA* in regard to the *Alberta Bill of Rights* that might oust its requirement that *FOIP* and *PIPA* comply with the *Alberta Bill of Rights*. The Respondent asks this Honourable Court to interpret the *School Act*, *FOIP* and *PIPA* contrary to the protections in the *Alberta Bill of Rights* of parents to "make informed decisions about the education of their children," as well as contrary to the religious and associational rights of parents.

33. To get around the *Alberta Bill of Rights* and its protection for parental rights, the Respondent asks this court to conclude that GSAs do not constitute "education"[36] for the purposes of the *School Act*, or the *Alberta Bill of Rights.*[37] This argument is without merit.

34. First, the word "education" in section 1(g) of the *Alberta Bill of Rights* must be interpreted broadly and purposively to give effect to the intended meaning. GSAs convey information to children about sexuality from a particular world view, such that the children, as recipients of that information, are learning. Prior to Bill 24, parents could opt their children out of GSAs because of the sexual nature of the information provided in and through GSAs, just as they could opt their children out of the teaching of explicit sexual themes taught by schools in the curriculum. Bill 24 removed this ability from parents in regard to GSAs, such that children as young as five can now be exposed to sexually graphic materials, and a perspective on sexuality that is entirely hostile to what parents teach their children at home.[38]

35. Second, the GSA support materials that are in evidence in this action, and the Affidavits of the Respondent, show that one of the primary purposes of a GSA is to educate.

36. For example, the travelling GSA support personnel's job, such as those employed by the Calgary Sexual Health Centre (which is substantially funded by the Alberta government)[39], is to "teach" the "prevailing thoughts" about gender[40] to GSAs. The President and CEO of the Calgary Sexual Health Centre (the "Centre"), Pamela Krause,

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[35] *Alberta Bill of Rights*, RSA 2000, c A-14, s. 2.
[36] Alberta Bill of Rights, RSA 2000, c A-14, s. 1(g), protects the right of Alberta parents to make informed decisions respecting the education of their children."
[37] Respondent's Brief, paras. 38 and 42.
[38] See section 50.1 of the *School Act.*
[39] Transcript of Questioning of Pamela Krause, May 29, 2018, p. 7, lines 4-
[40] Transcript of Questioning of Pamela Krause, May 29, 2018, p. 38

has acknowledged that there are other viewpoints about gender fluidity (for example, the view that sex/gender is binary, and that it is impossible for a person to transition between male and female) but admitted that the Centre does not utilize materials which discuss or promote any of those alternative views.[41]

37. The Affidavit of Hilary Mutch, filed in support of the Centre's Application for Leave to Intervene, broadly discusses her role as a LGBTQ+ Youth Education and Programs Coordinator in coordinating the Calgary and area Gay-Straight Alliance Network; the word "Education" is formally part of her title. Further, GSA and QSA discussions are specifically billed as "peer to peer education".[42]

38. Ms. Mutch references a GSA-related program called fYrefly-in-Schools, which "**educates** students on LGBTQ+ Identities and the impact of homophobic and transphobic behaviour, giving them tools to challenge discrimination through activities, participation and stories from a youth panel. Experienced **educators** facilitate activity-based workshops with help from a youth peer **education** team."[43] [emphasis added]

There are GSAs specifically geared to young children

39. This "education" is deliberately geared to young children, not only mature minors. According to Ms. Mutch's materials, the goals for Alberta GSAs in 2017 "included programming that was inclusive to youth younger than high school age"[44] and that "the GSA Conference is open to students from kindergarten through grade 12".[45] The 2017 GSA conference included a session that gave specific instruction on starting GSAs in elementary and middle schools.[46] Ms. Mutch noted in her 2017 Calgary and Area GSA Network Report that at a December 7, 2017, meeting she had with students and staff, "[s]taff who attended had various questions about starting GSAs in schools with

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[41] Transcript of Questioning of Pamela Kraues, May 29, 2018, p. 48
[42] Affidavit of Hilary Mutch, Exhibit "G", page 2.
[43] Affidavit of Hilary Mutch, Exhibit "B", page 2 [emphasis added].
[44] *Ibid*, See Exhibit "D", page 2, goals as determined at the Annual 2017 GSA Conference held in Calgary on November 28, 2017.
[45] *Ibid*, para. 31.
[46] *Ibid*, Exhibit "I" to the Affidavit of Hilary Mutch, referencing 6th Annual Alberta GSA Conference 2017 Report and Recommendations at page 14 - The impact of GSAs has not been studied, since as noted in the 2014 Saewyc et al. study cited by Dr. Alderson, "[s]eventh graders were also excluded in this study, because the majority of these students were enrolled in either elementary or middle schools, where GSAs have not been implemented in British Columbia." Schools-based strategies to reduce suicidal ideation, suicide attempts, and discrimination among sexual minority and heterosexual adolescents in Western Canada: International Journal of Child, Youth and Family Studies (2014) 1: 89-112, at p 94.

Elementary-aged youth."[47] Ms. Mutch states her most important mission is using students to create "social change".[48]

40. Finally, the Crown's expert, Dr. Kevin Alderson, also lists "educational activities for members" and "educational outreach at school" as two of the primary purposes of a GSA.[49] Further, Dr. Alderson cites research which states that 70.7% of GSA participants indicate that their GSA engaged in "educational activities".[50] The author of this same study notes that "students educating students may have more impact on school climate than teachers in a classroom" and "[i]f GSA activities take place during school hours, and attempt to advocate and educate, there is a greater chance of success, due to their ability to reach more students, and to discuss issues on a peer level."[51]

41. The Respondent argues that GSAs do not constitute "education" for the purposes of the *School Act* or the *Alberta Bill of Rights*,[52] yet the language in the *School Act* itself discusses GSAs in the context of a "welcoming, safe, caring and respectful **learning** environment".[53]

The Charter

42. The *Charter* is the supreme law in Canada. Legislation which conflicts with the *Charter* is of no force or effect.[54] Yet the Respondent has not analyzed sections 2(a), 2(d) or 7 of the *Charter*, or the interaction of those provisions with the *School Act, FOIP* or *PIPA*. The Respondent is asking this Honourable Court to interpret the *School Act*, as well as *FOIP* and *PIPA*, in a manner that violates the *Charter*.

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[47] Exhibit "D", page 2.
[48] *Ibid*, Exhibit "D", page 4.
[49] Affidavit of Kevin Alderson, p. 10, para. 26.
[50] Affidavit of Kevin Alderson, Exhibit "D" - "Making Schools Safe and Inclusive: Gay-Straight Alliances and School Climate in Ontario"), p. 22.
[51] *Ibid*, p. 26.
[52] Respondent's Brief, paras. 38 and 42.
[53] *School Act*, s. 16.1(1).
[54] *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, section 52.

43. The Supreme Court has long recognized that provincial governments must make appropriate accommodations in education, particularly when imposing conditions on religious groups providing education. As the Court said in *R v Jones*[55]:

> Certainly a reasonable accommodation would have to be made in dealing with this issue to ensure that provincial interests in the quality of education were met in a way that did not unduly encroach on the religious convictions of the appellant. In determining whether pupils are under "efficient instruction", it would be necessary to delicately and sensitively weigh the competing interests so as to respect, as much as possible, the religious convictions of the appellant as guaranteed by the *Charter* . Those who administer the province's educational requirements may not do so in a manner that unreasonably infringes on the right of parents to teach their children in accordance with their religious convictions. The interference must be demonstrably justified.
>
> …
> I have already stated that if it can be established that the school authorities' action is exercised in an unfair or arbitrary manner, then the courts can intervene. It may also be that at some stage certain requirements, whether imposed directly by the School Act or by regulations or by officials of the Department of Education or of local school boards, may have to give way to the liberty of the individual to educate his children as he pleases to the extent that such liberty is protected by the *Charter*.[56]

44. At paragraph 56 of its Brief, the Respondent cites from *B. (R.) v. Children's Aid Society of Metropolitan Toronto*: "in a case in which a child's right to security of the person conflicted with a parental right, the child's right would prevail". It is important to recognize that in *B. (R.)* the child's security of the person was threatened, as was her very life. The current context of education is "immense[ly] different" from the urgent medical care situation addressed in *B.(R).*, as was specifically noted by Justice Iacobucci and Justice Major:

> In any event, **there is an immense difference between sanctioning some input into a child's education** and protecting a parent's right to refuse their children medical treatment that a professional adjudges to be necessary and for which there is no legitimate alternative. [Emphasis added][57]

Section 7 protects children by protecting parental rights

45. It is important not to misconstrue the jurisprudence by asserting a broad, vague and general claim that all children somehow enjoy "security of the person" *as against their*

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[55] [1986] 2 SCR 284, 1986 CanLII 32 (SCC) ("*R. v. Jones*")
[56] *R. v. Jones*, at paras 25 and 47.
[57] [1995] 1 SCR 315 ("*B.R.*") Para 215, p 431

own parents. *Charter* section 7 protects children by protecting parents' responsibility and their "right to nurture a child, to care for its development, and to make decisions for it in fundamental matters" including their "moral upbringing".[58] There is no support in jurisprudence for an ideology that appears to see all parents as the enemies of their own children, or otherwise untrustworthy. The Respondent's position is repudiated by the Supreme Court, which upholds 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."[59] Interference with this parental responsibility and right to make important decision affecting their children is justified "only when necessity was demonstrated".[60]

46. The Court's assumption is that parents are trustworthy, and have every right to be fully informed about all that transpires in the lives of their children, with narrow exceptions to this premise carved out on a case-by-case basis where demonstrably necessary. In contrast, Bill 24 legislates the opposite assumption, that no parent is trustworthy, and therefore all parents must have information withheld.

47. In the context of upholding government intervention where a determination of "serious harm or risk of serious harm to the child"[61] had been made, the Supreme Court has reaffirmed the mutual bond between parents and their children, and the importance of protecting that relationship:

> 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. Parents must be accorded a relatively large measure of freedom from state interference to raise their children as they see fit.
>
> …
>
> It must also be recognized that children are vulnerable and depend on their parents or other caregivers for the necessities of life, as well as for their physical, emotional and intellectual development and well-being. Thus, protecting children from harm has become a universally accepted goal: see the *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3, now ratified by 191 states, including Canada.[62]

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[58] Ibid at para 83.
[59] Ibid at para 85.
[60] See Ibid at paras 83-85.
[61] *Winnipeg Child & Family Services (Central Area) v W.(K.L.)*, 2000 SCC 48, at para 117
[62] *Ibid* at paras 72-73.

48. Parents have the primary responsibility for protecting their children from harm. The section 7 rights of their children do not conflict with this responsibility. Rather, in the majority of cases, the section 7 rights of children, to life, liberty and security of the person, are safeguarded through the decisions of the parents. A failure to appropriately notify parents when the life, liberty or security of the person of a child is affected, is a violation of the *child's* section 7 rights.[63] As is shown by some of the cases below, the security of the person, and sadly even the very lives of some students, have been risked in attending GSAs, with schools failing to properly notify parents.

Section 2(a) protects parental rights

49. The Supreme Court also affirm that the right of parents to guide the moral and religious upbringing of their children is also protected by freedom of conscience and religion.[64] The Respondent argues at para 57, that the prohibition on parental notification in section 16.1(6) does not violate the Applicants' freedom of religion. In addition to interrupting the ability of parents to direct their children's moral and religious education,[65] the Impugned Sections violate the religious tenets of the various faiths of the Applicant schools concerning the crucial role and responsibility of parents in teaching their children.[66]

B: The Respondent's argument that GSAs are benign and beneficial

50. To know whether something is beneficial, it is necessary to know what it is. Both the Respondent and the Calgary Sexual Health Centre claim that GSAs are beneficial and necessary. The question becomes: what exactly is a GSA?

51. It is impossible to say with any objective certainty what a GSA is.

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[63] *C.P.L., Re*, 1988 CanLII 5490 (NL SC), at paras 76-80, 87-88 and 97: "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."

[64] *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at paras 64-67.

[65] Including specifically permitting GSAs and "activities" to deal "primarily and explicitly with religion and human sexuality" while prohibiting parental notification.

[66] See e.g. Affidavit of Sukhvinder Malhotra at paras 6-7; Affidavit of David Joeseph Rose, at paras 8-9; Affidavit of Paul Neels, sworn April 3, 2018, at paras 9-10.

52. The *School Act* does not define what a GSA is, nor what it may not be. The government of Alberta has not legislated that schools must limit the information that parents may receive about clearly defined clubs, such as those devoted to badminton, debating or chess. GSAs are in a class all alone by themselves – one which dramatically increases the responsibility and potential liability of schools in the event of a mishap, such as a child being sexually abused by a teacher or another student.

53. There are no legislative or regulatory parameters whatsoever as to what materials are to be used, or may be used, at a GSA. Nor does the legislation prohibit, or even restrict, the presentation of sexual materials to children. The Assistant to the Deputy Minister of Education, Wendy Boje, acknowledged at the Questioning on her Affidavits that neither the *School Act* nor its regulations establish any parameters as to the materials which may or may not be used at a GSA.[67]

54. This raises the obvious question: if there are no parameters as to what materials may be used, how can it be said that GSAs are "beneficial" , or that it is lawful to restrict parental knowledge as to their children's participation in such clubs, which includes exposure to unknown materials? The Applicants respectfully submit that no court in this country should uphold mandatory restrictions of parental information in regard to activities and information their children will be exposed to, when no parameters have been established. To do so would be a gross and totalitarian infringement of parental rights.

55. The failure of the *School Act* to establish parameters is underscored by the disagreement amongst GSA supporters as to what is appropriate material for a GSA. For example, the Centre and the Faculty Coordinator of iSMSS which manages the Alberta GSA Network disagree as to what is appropriate material for a GSA.

56. The Centre says it would be inappropriate to teach children at GSAs graphic sexual content, such as that found in the Zebra A-Z cards.[68] The Faculty Coordinator of iSMSS, which manages the Alberta GSA Network, Andre Grace, disagrees.

57. Dr. Grace, who is also the founder of the CHEW Project, says that it is entirely appropriate to teach youth about sexual attraction to one's television, "felching", the use of glory

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[67] Transcript of Questioning of Wendy Boje, held June 15, 2018. (At the time of the filing of this Brief, the Transcript of Ms. Boje's Questioning was not yet available, but will be filed as soon as it is available.)
[68] Questioning of Pamela Krause, pps. 31-33; Zebra A-Z cards at Exhibit "N" to the Affidavit of Theresa Ng.

holes, yellow and brown showers, pornography, auto fellatio, and a host of other high-risk sexual behaviour.[69] Dr. Grace is a founder of Camp FYrefly, where the most popular workshop was on sex toys.[70]

58. The Applicants are justifiably concerned about the Zebra A-Z cards, and materials like them, and whether they are used or will be used at a GSA. The Assistant to the Deputy Minister, on behalf of the Respondent, acknowledged that she did not know whether or not Dr. Grace attends GSAs.[71] Ms. Boje claimed during Questioning that only certified teachers could be present at GSAs,[72] but there is nothing in the *School Act* to *require* the presence of a teacher at a GSA, or any adult. The *School Act* says that schools shall appoint a staff person as facilitator, it does not say that the facilitator must be present whenever the club meets or for all of the meeting.[73] Further, the Centre employee, Hilary Mutch, is not a certified teacher, and she is regularly present at GSAs.[74] Neither is Maria De Leeuw, who leads the GSA in Olds.[75] Dr. Grace is a professor at the University of Alberta who would presumably be welcome to attend a GSA. There is nothing in the *School Act* to stop him attending, and the *School Act* restricts schools from telling parents if Dr. Grace has access to their children.

59. Further, the Centre evidences a definite slant toward a particular worldview in its teachings. For example, the Centre admits that, while it teaches about sex, it does so without reference to sexual morality. While asserting that gender is fluid, the Centre states that it is "not the role of the Calgary Sexual Health Centre" to talk about sin, God, ideas about right and wrong, or the moral nature of sexuality.[76] The Centre "feels strongly" that sex is a matter of personal choice,[77] not morality, and teaches accordingly.[78] This contradicts the religious beliefs of the Applicant schools and parents, who believe and teach their children that there are moral implications to sex.

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[69] Affidavit of Keith Penner, para 23, Exhibits "H" and " I", referencing Zebra A-Z cards, see Affidavit of Theresa Ng, Exhibit "N".
[70] Affidavit of Keith Penner, Exhibit "H"; Affidavit of Theresa Ng, para 33, Exhibit "P".
[71] Transcript of Questioning of Wendy Boje.
[72] *Ibid.*
[73] School Act, section 16.1(1)(b)
[74] Transcript of Questioning of Hilary Mutch, May 29, 2018, p. 6.
[75] Affidavit of Donald Stacey, at para 7.
[76] Transcript of Questioning of Pamela Krause, May 29, 2018, p. 63
[77] Transcript of Questioning of Pamela Krause, May 29, 2018, p. 62
[78] Transcript of Questioning of Pamela Krause, May 29, 2018, p. 64

60. The confusion and perturbance of the Applicants is justified. If it is not the place of the Centre to teach about morality and right and wrong, why is it the place of the Centre to teach children that individuals can decide values about sex for themselves, and that that is what really matters? Why is it the place of the Centre to teach the children at GSAs that it is possible to transition between male and female and withhold the presentation of evidence (like biological science) of the other perspectives on that issue? Why is the role of the Centre to teach contrary to the religious beliefs of parents, and where does the Centre receive its mandate to do so? Why should workers from the Centre, or anywhere else, be able to attend at an independent religious school and teach contrary to the beliefs of the school just because that teaching takes place at a GSA?

61. The Centre justifies its teachings in regard to male and female and transitioning by claiming that telling children that its possible to transition is not "a medical perspective".[79] But Ms. Krause also asserted that the Centre considers it its "role" to "refer" gender dysphoric individuals to the Calgary Children's Hospital.[80] Neither Ms. Krause nor Ms. Mutch (the Centre's other Affiant in this case) have any training as psychologists or doctors.[81] The Centre lacks the qualifications to either diagnose gender dysphoria or refer for it, but it claims it has a mandate to do so.

62. The Applicants all share the desire to create safe and caring learning environments for students, and they do so with remarkable success.[82] Having a GSA is not necessary for the Applicants to attain these goals.[83] Further, the foundational presuppositions of GSAs are not compatible the character and beliefs of many of the Applicant schools.[84]

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[79] Transcript of Questioning of Pamela Krause, May 29, 2018, p. 55.
[80] Transcript of Questioning of Pamela Krause, May 29, 2018, p. 53.
[81] Transcript of Questioning of Pamela Krause, May 29, 2018, p. 6; Transcript of Questioning of Hilary Mutch, May 29, 2018, p. 6-7.
[82] See Affidavit of Jordan Tiggelaar, at para 18; Affidavit of Keith Penner, at para 14; Affidavit of Cameron Oke, para 20.
[83] There is no research concerning the beneficial results of GSAs in faith-based schools, such as the Applicant schools.
[84] Affidavit of Keith Penner, a paras 37-38: "Living Waters Christian Academy believes and promotes the belief that our identity is rooted in the blessing and love of the God who created each person. We are not defined by a single factor of our existence, whether gender or sexuality or any other personal characteristic. We are created to find wholeness and fulfillment in the many roles, responsibilities, activities, and blessings that are part of being a responsible steward of the life God has given us. To narrowly prioritize one aspect of identity or assume that fulfillment comes from our gender, sexuality, or their expression, is a contradiction of the scripture. A club based on gender and sexuality is a violation of the priority to seek wholeness, and to pursue inclusive community that is unconcerned with identity." See also Affidavit of Cameron Oke, at paras 13-14; Affidavit of Simon Faber at para 15.

63. Finally, there are other concerning unknowns about GSAs. For example, are GSAs required to only meet on school grounds? The *School Act* is silent on this issue, but the evidence filed in this constitutional challenge to the legislation shows that GSAs are in fact meeting off school grounds without parental permission.[85] Can any age of child be taken by their GSA off school grounds? No distinction is made in the *School Act* between a child of five and a child of seventeen. The Applicants are justifiably concerned about the prospect of a younger child leaving school grounds without parental consent or knowledge just because that child is in a GSA.

64. Is an adult required to be present at a GSA? The *School Act* does not require an adult to be present, and further does not require that adults who may be present have a criminal background check or other vetting. Nothing in the *School Act* prevents an adult (or a child) from bringing sexually suggestive or inappropriate materials to a GSA.[86] Are there any age restrictions as to the children who can be present together at a GSA, or can a school GSA have children who are 6 years old and 17 years old at the same GSA, at the same time? The *School Act* fails to address this basic point, even though adult themes may be discussed at the club, all without the knowledge or presence of parents.

65. In fact, one of the only things that is clear about GSAs is that they may deal "primarily and explicitly with human sexuality" and can do so without parents being notified.[87]

The gaps in what a GSA is, where it may take place, who may have access to children, what materials can be presented, render the restriction of parental information not only unconstitutional, but a real threat to child safety.

The Evidence of Experts

66. Dr. Miriam Grossman M.D., a practicing psychiatrist and Dr. Quentin Van Meter, a practicing endocrinologist, both attest in their Affidavits filed in this action that the concepts of gender and sexuality advocated in GSAs are scientifically wrong, and cause harm, particularly to children.[88] Dr. Grossman explains:

> The idea that it is possible or advisable to attempt to "transition" promoted by activities blur and call into question the most essential aspect of identity – whether one is male or female. **It is confusing and frightening for the vast majority of**

[85] See Affidavit of ND; see also Affidavit of Donald Stacey, at para 10.
[86] See Affidavit of Donald Stacey, at paras 11-13.
[87] See *School Act,* sections 50.1 and 16.1(6).
[88] Grossman Affidavit at paras 4-5; Van Meter Affidavit at paras 9-10, 12-14, 16, 19, 20, 22, 23.

> **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.**[89]

67. On her cross examination, Dr. Grossman set out her concerns about the kind of groups mandated by the *School Act* as follows:

> My fundamental objection to having these groups in the schools is, number one, the materials that children are exposed to; number two, the lack of training of the leaders of these groups, the lack of professional training; and, three, the issue of parents, parent involvement and parent awareness of their – of what their child is learning, and even just the fact that they're attending a group, the parents have the right to know about.
>
> And, furthermore, I discuss how -- how trust is a -- a central feature of a healthy parent/child, child/parent relationship.
>
> A central feature of the parent/child relationship. And for a child to be able to attend a group or meetings in which material related to sexuality and gender is discussed, for parents not to be aware of that is destructive to the family, and it is – it could certainly, in some children, cause them mental anguish, as well as their parents.[90]

68. On her cross examination, Dr. Grossman explained that that an environment considered safe and respectful for some children may not be so for other children:

> Well, again, this is a complicated issue because what might feel safe and respected to one child does not feel like safety and respect to another child. Each family is different, each child is different, and I wouldn't make vast generalizations. For example, a child who comes into a type of situation and comes from a different cultural background and has cultural beliefs about these matters, is that child going to feel safe if those cultural beliefs contradict and fly in the face of what the leader of such a group is instructing?[91]

69. Dr. Van Meter likewise notes that "there is unquestionable proof of harm to children by promoting affirmation therapy, hormonal and surgical treatment to outwardly change the

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[89] Grossman Affidavit, para. 5(iv, v)
[90] *Transcript of Oral Questioning of Miriam Grossman*, June 14, 2018, 23:4-25
[91] *Ibid* at 39:5-15.

sex of the patient."[92] He also cited the Dhejne study, which measured the long-term effects of those who had affirmation, cross-sex hormone therapy and surgical manipulation discovered their suicide rate was 19 times higher than the general population, a shocking statistics coming from one of the world's most progressive and affirming countries.

70. Dr. 's Grossman's testimony that younger children, or those with learning disabilities , or those with lower IQ's are particularly susceptible to harm from being taught that it is possible to transition from male to female is born out in the experiences of both P.T. and J.P's daughters.[93]

71. P.T.'s daughter was an autistic and intellectually-disabled 12 year old girl in a GSA, where she was encouraged to identify as a boy and became suicidally depressed until her parents were ultimately informed about what she was experiencing, and were able to save her life by removing her from the GSA and affirming her identity.

72. Unfortunately, this young girl is not the only child who has experienced profound negative effects due to her GSA experience and her isolation from her parents. Evidence of harm to particularly vulnerable children continues to emerge.

73. In a rural central Alberta school, a 13-year-old student visited a "school counsellor" (actually a teacher with no training as a psychologist or psychiatrist) about persistent bullying and not fitting in.[94] After one session, this "counsellor" told the girl that she was "probably a boy".[95] In the second session, the "counsellor" affirmed her unaccredited diagnosis, and told the girl, "you are a boy", and advised her to join the same GSA that this "counsellor" was involved with.[96]

74. At her first GSA meeting, the girl was further encouraged to think she was a boy and was taught how to bind her breasts in order to present as a boy.[97] Within a very short period

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[92] Van Meter Affidavit at para 9.
[93] See Affidavit of PT, discussed at paras 31-33 of the Brief of the Applicants, filed April 6, 2018; see Affidavit of JP. The Respondent unreasonably demands that an autistic girl swear an affidavit and be subject to cross-examination in order for this Court to be made aware of suicidal depression she suffered which was observed first hand by her parents and teachers. Respondents Brief, para 72. Further, Dr. Van Meter has provided his concern over the treatment of PT's daughter within the GSA. See Transcript of Oral Questioning of Quinten Van Meter, June 14, 2018 at 14:7; 42:15-19.
[94] Affidavit of JP, sworn May 23, 2018 ("JP Affidavit") at paras 3-6.
[95] JP Affidavit at para 6.
[96] JP Affidavit at para 7.
[97] JP Affidavit at paras 8.

of time, the GSA leader and the other students began referring this girl with a "boy's name" and male pronouns, with no notice to her parents.[98] At the GSA, the girl was told stories about people who had been kicked out of the parents' home after "coming out", so again, not surprisingly, this girl did not tell her parents about the radical changes going on in her life.[99] The girl's mental health significantly deteriorated.[100]

75. Eventually, everyone in the school was referring to her as a male, and this girl was told she should no longer use the girls' washrooms or change rooms but could utilize the staff washrooms and change in the school infirmary.[101]

76. In the GSA, the girl was taught that she could have a sex change operation, but would need to start taking hormone pills.[102]

77. After a few months, this girl told her mom that she had been going to the GSA and talking to the "counsellor" about being a boy.[103] Her mother assured her that her family loved her regardless of what she was experiencing.[104] But when the mother met with the school "counsellor" to discuss how best to help her daughter, the counsellor refused to provide any information to the mother, claiming it was all "confidential."[105]

78. A couple months later, in March 2018, the girl's parents discovered that not only was her school officially referring to her as boy, but also that she was very suicidal and had attempted to kill herself by taking a large quantity of pills.[106] Once they knew what their daughter was experiencing, her parents were able to provide their daughter with the consistent care and support she needed. Their daughter has now experienced significant improvements in her mental and physical health, and is no longer suicidal.[107]

79. On account of the restrictions on notifying parents concerning their children's involvement in GSAs, the parents of each of these young girls are very concerned for their

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[98] *Ibid* at para 11.
[99] *Ibid* at para 12.
[100] *Ibid* at para 15.
[101] *Ibid* at paras 13,
[102] *Ibid* at para 14.
[103] *Ibid* at para 17.
[104] *Ibid* at para 17.
[105] *Ibid* at para 18.
[106] *Ibid* at para 20-21.
[107] *Ibid* at paras 22-24.

daughters, who remain vulnerable and need the continued informed care and support of their parents.[108]

80. The emotional harm and risk of death these girls' experienced in different schools in different parts of the province share common causal elements: a GSA teaching students a progressive gender ideology without notifying parents.

81. According to Dr. Grossman, one of the tasks of childhood and adolescence is to develop a strong identity. Having a strong identity is a hallmark of psychological health. Identity confusion can cause distress and can impact relationships and daily functioning.[109] There is evidence before this Court that corroborates Dr. Grossman's opinion in actual harm to vulnerable children due to the gender ideology being taught at Alberta GSAs. There are many young and vulnerable children in Alberta schools. P.T. and J.P.'s daughter will not be isolated cases, nor will the risk to those who have already been harmed be fully mitigated until the Impugned Provisions are stayed pending a full hearing. There is a real risk of irreparable harm.

82. These common elements seem to transcend GSA groups and activities across the province. In a Calgary classroom, the school GSA provided a ninety-minute presentation to junior high students about the progressive or post-modernist ideology of sexuality and gender, without prior notice to parents.[110] When explaining to a parent why there was no prior notice of this presentation given, the Principal stated:

> I need education myself to stay in touch with all the new changes in the laws that our government has placed upon us as well. Whether I agree with it or not, that's something I have to follow. It's been hard as an administrator.[111]

83. According to Dr. Grossman, teaching children that it is possible to transition between male and female, without telling children that their sex is established immutably in their chromosomes, is unethical and psychologically damaging.[112] Yet that is the message being promoted to children in GSAs.

School staff, including teachers, pose a risk to students

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[108] *Ibid* at paras 26-29; PT Affidavit at paras 78-79.
[109] Grossman Affidavit, para. 5(iv).
[110] Affidavit of FR at paras 14-24.
[111] *Ibid* at paras 25-27.
[112] Grossman Affidavit, para. 5(iii)

84. Removing children in schools from parental oversight ignores the lessons of the Residential School System, through which children suffered serious harm when removed from their parental oversight, family beliefs and culture.[113] The Truth and Reconciliation Commission calls for an education system that enables "parental and community responsibility, control, and accountability" and enables "**parents to fully participate in the education of their children.**"[114]

85. Canada has recently been reminded about the real risks of abuse children face in our schools, with a 2018 report chronicling reports of over 1,300 children victimized by sexual offences committed by school staff within the last 20 years.[115] 1,300 is only the known cases of abuse. Abusing staff included "educational assistants, custodians, school bus drivers, student teachers, principals and vice principals, guidance counselors, support staff, and school volunteers."[116] The student noted that "grooming behavior was identified in 70% of the cases."[117] Grooming "involves manipulating the perceptions of children and adults around children to gain their trust and cooperation. It is also used to normalize 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."

86. Evidence in the record reveals that leaders of GSAs have unique access and relationships with children[118] as they participate in regular meetings discussing children's sexuality,[119] off campus meetings and events,[120] viewing of highly sexualized movies[121] and visiting the homes of GSA leaders.[122] While many GSA leaders are undoubtedly genuine in their care for students, this does not remove the opportunity for grooming.

87. The Canadian Centre for Child Protection states that "parents should have the right to know about any professional transgressions by the person spending so much time with

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[113] See Affidavit of FR at para 40; Affidavit of Mavis Giant, at paras 31-33, 37.
[114] *Truth and Reconciliation Commission of Canada: Calls to Action*, 10(v) and (vi) (emphasis added), attached as Exhibit "C" to the Affidavit of Mavis Giant.
[115] 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, [TAB 1] also accessible at https://doi.org/10.1080/10538712.2018.1477218.
[116] *Ibid* at p. 5.
[117] *Ibid* at p. 10.
[118] See e.g. Affidavit of Donald Stacey at para 8.
[119] PT Affidavit at paras 22-23, 27, 36-37; Affidavit of JP at paras 8-9, 11, 14, 16.
[120] Affidavit of Donald Stacey at paras 6, 10 and 14.
[121] Affidavit of Donald Stacey at paras 11-13.
[122] Affidavit of Donald Stacey at para14

their children."[123] Yet, the recent changes to the *School Act* prohibit schools from any notification about clubs or activities other than "the fact of the establishment of the organization or the holding of the activity."[124] In particular, Alberta parents are now kept in the dark, by law, about which other adult(s) have access to their children in the context of GSAs and activities.

88. The removal of parental oversight from groups and activities creates an obvious and inexcusable heightened risk for the abuse of children. The Respondents' assertions that children as young as five are free to properly notify their parents if they want to do so ignore the fact that these minor students often lack the capacity to understand when it is important, or necessary, to notify their parents, as seen in the record.[125]

89. This prohibition on notifying parents applies not only to GSAs, but to other activities and groups in the Applicant schools.[126] Prohibiting appropriate parental notification of these activities and groups undermines their very purpose.[127]

C: The Annual Declaration

90. As outlined in the Affidavit of Paul Neels,[128] each independent school, including all the Applicant schools, must file an Annual Declaration. The date for the submission of the Annual Declaration was moved from May 30, 2018 to June 30, 2018. The Annual Declaration includes documentation such as a school's program curriculum for the upcoming school year, proof of fire and health inspection, proof of insurance and sufficient fidelity bond coverage and up to date corporate registration.[129]

91. The 2018-2019 Annual Declaration requires schools to attest to comply with the *School Act.* The *School Act* was amended in the intervening time between last year's Annual Declaration (then called the Annual Operating Plan), and now. The 2018-2019 school year is the first year that schools are being asked to attest to comply with the *School Act* as

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[123] Ibid at p 19
[124] Section 16.1(6).
[125] See PT Affidavit and JP Affidavit.
[126] See Affidavit of Murray Meldrum, at paras 18-19.
[127] *Ibid* at paras 36 and 41.
[128] Affidavit of Paul Neels, filed April 27, 2018
[129] For complete list of the requirements of the Annual Declaration see paragraph 10 of the Affidavit of Wendy Boje, sworn June 11, 2018, and Exhibit "A" thereto.

amended by Bill 24. Portions of the *School Act* as amended by Bill 24 are under constitutional challenge in this litigation.

92. Also new to the 2018-2019 Annual Declaration is a requirement that the submitting school attest to comply with section 45.1 of the *School Act*. (The requirement to attest to comply with the *School Act* as well as section 45.1 is hereafter referred to as the "Attestation Requirement").

93. Also new to the 2018-2019 Annual Declaration is an online filing format.[130] In order to submit the Annual Declaration through the Alberta Education "extranet portal", a school must first check the Attestation Requirement. Only once the Attestation Requirement is checked will the Alberta Education online portal permit the submission of the Annual Declaration and its documentation.

94. During her Questioning on June 15, 2018, Ms. Boje testified that she had no idea how the Attestation Requirement got onto the Annual Declaration.[131] Ms. Boje confirmed that there was nothing in the *School Act* or its regulations that required a school to attest to comply with the *School Act* or section 45.1 as a condition.[132]

95. Because of the online process that was instituted for the 2018-2019 school year, the Attestation Requirement has created a barrier to the filing of the Annual Declaration. In order to submit their documentation, the schools must agree to comply with the *School Act*, which means agreeing to limit the information available to parents about GSAs (thereby infringing parents legislated and section 7 *Charter* rights) and agree to infringe their own religious rights (Jewish, Sikh and Christian) in regard to the institution of GSAs.[133] Failure to check the Attestation Requirement means that a school is unable to use Alberta Education's extranet portal to submit the supporting documentation required in the Annual Declaration.[134]

96. Because they cannot use the extranet portal, the Applicant schools have sent in paper and electronic copies of the Annual Declaration directly to Alberta Education, and copied the

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[130] Transcript of Questioning of Wendy Boje.
[131] Transcript of Questioning of Wendy Boje.
[132] Transcript of Questioning of Wendy Boje.
[133] The Applicant schools object to being compelled to attest to comply with legislation that they have constitutionally challenged and to do so in advance of a court's determination on the merits.
[134] Affidavit of Paul Neels filed April 27, 2018, para.

Assistant to the Deputy Minister, Wendy Boje.[135] Ms. Boje has confirmed that she has received a number of Annual Declarations via email and has forwarded them to Sharon Styles in the Field Services department of Alberta Education.[136]

97. While Ms. Boje confirmed during Questioning that in all past years paper copies of the Annual Declaration were acceptable, Ms. Boje did not confirm that the Applicant school's paper Annual Declarations for the 2018-2019 school year would be processed.

98. During Questioning, Ms. Boje also testified to the following:

a. That despite the fact that Alberta Education had known for months that the Attestation Requirement would be a barrier to submitting the 2018-2019 Annual Declaration, Alberta Education had no clear idea how it would handle schools that could not complete the Attestation Requirement;

b. That it was possible that if the Annual Declaration issue was not solved prior to September 1, 2018 and the start of the new school year that funds would be withheld from the school in question;

c. That Alberta Education was aware that the Applicant schools required proper notice if Alberta Education determined that it would not permit the schools to operate in the 2018-2019 school year, and that the start of the new school year was only two and a half months away;

d. That a process involving section 45.3 of the *School Act* would unfold for schools that did not check the Attestation Requirement (which would entail investigation of the school in question under section 40 and a ministerial order under section 41); and

e. That a ministerial order may result in loss of accreditation or cessation of funding for the school in question.[137]

99. Ms. Boje also testified that schools who did not submit the Annual Declaration on time by June 30, 2018, would be presumed to be in breach of the *School Act* on July 1, 2018.

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[135] Transcript of Questioning of Wendy Boje.
[136] Transcript of Questioning of Wendy Boje. Despite the fact that Ms. Boje confirmed that the electronic copies which had been submitted to her and had reached her via email, counsel for the Respondent refused undertakings to produce the emails and annual declarations of the schools in question. The Applicants intend to bring an Application to compel the production of undertakings arising from Ms. Boje's Questioning.
[137] Transcript of Questioning of Wendy Boje.

When asked why this was so, Ms. Boje testified it would be presumed that they had not posted compliant safe and caring policies.

100. The Applicant schools submitted safe and caring policies to the Minister of Education, in response to his Order, back in 2015.[138] Despite many requests, the Honourable Minister has failed or refused to advise the Applicant school whether or not their safe and caring policies are compliant are not.[139] It would be manifestly unjust to take action against the Applicant schools on the basis of their safe and caring policies, which were submitted in a timely fashion and in good faith in response to the Minister of Education's Order. It is manifestly unjust and coercive to compel the Applicant schools to attest to comply with legislation which has been constitutionally challenged.

101. The Applicants have applied for an injunction to prevent the Respondent from "taking any action to defund or de-accredit or otherwise penalize or disadvantage the Applicant schools in relation" to the non-filing of the Annual Declaration.

102. It is submitted that the Applicants meet the test for injunctive relief regarding the Annual Declaration.

103. First, there is a serious issue to be tried. There are twenty-six Applicant schools in this litigation. Together, they teach more than 5000 students throughout Alberta of the Jewish, Sikh and Christian faith. The Applicant schools have taken steps to ensure that their Annual Declarations are submitted in paper or electronic format to Alberta Education, but they cannot check the Attestation Requirement without agreeing to infringe parental and their own constitutional rights. In the meantime, they have challenged the impugned sections of the *School Act* on constitutional and other legislative grounds. The infringement of *Charter* rights (both parental and religious) is a serious issue to be tried.

104. Secondly, it would cause dramatic and irreparable harm if the Respondent determined that it would refuse accreditation or funding for the 2018-2019 school year. For the Respondent to do so to 26 schools a short time from the new school year commencing September 1, 2018 would cause irreparable harm. Parents and children would be left scrambling to find a replacement for their chosen religious school. Hundreds of teachers would lose their jobs. Further, according to the Assistant to the Deputy Minister, it will

[138] Transcript of Questioning of Wendy Boje.
[139] Transcript of Questioning of Wendy Boje.

take Alberta Education some time to process the Annual Declarations, and there is a substantial likelihood that the evaluation would not be completed until after September 1, 2018. In the event that punitive action is taken against the Applicant schools in regard to the Annual Declaration, it is foreseeable that such action would take place during the new school year, occasioning an even greater disruption to students.

105. Third, the balance of convenience rests squarely with the Applicants. The Applicants have taken steps to ensure that their requisite documentation is before Alberta Education. They object to the checking of the Attestation Requirement as a condition of their Annual Declarations. They object to being compelled to attest to comply with legislation that is currently under court challenge. For the Applicant schools to be defunded over the Attestation Requirement would be to be shut down over an ideological technicality. The Applicant schools have either already submitted the Annual Declaration, including the documentation that is required such as inspections and bonds and corporate materials, or are in the last stages of doing so. No legislation or regulation requires the imposition of the Attestation Requirement. It is an arbitrary requirement from Alberta Education.

106. Further, there is no evidence at all before this Honourable Court that the Applicant schools are not safe. The Applicant schools have exemplary history with Alberta Education and has been found, time and time again, to be in compliance with the legislation and fit to operate.

PART 3: CONCLUSION

107. The Impugned Sections raise the spectre of irreparable harm to children. The Applicants respectfully submit that no court in this country should uphold mandatory requirements for schools to restrict information from parents in regard to activities and information their children will be exposed to, when no parameters have been established as to what those activities and materials will be. To do so would be a gross and totalitarian infringement of parental rights.

108. Further, according to the medical expert materials filed in this matter, teaching children that it is possible to transition between male and female can undermine their sense of identity and psychological stability. This is especially true for the young, the anxious, and those with learning disabilities such as autism or lower IQ's.

109. The medical opinions of these experts is not conjecture – they have been substantiated and verified in the experiences of the daughters of P.T. and J.P. in this case, each of whom suffered tremendously through the irresponsible actions of school staff.

110. The Respondent has failed to protect the vulnerable children that are being unfairly exposed to the sex and gender narrative as promoted and taught by particular groups who make no effort to teach that a person will always internally be male or female, and that no external change can alter this scientific reality.

111. Instead of admitting that it has acted prematurely, and in an arbitrary and irresponsible fashion that has failed the vulnerable children of Alberta, the Respondent has attempted to justify the flawed Impugned Provisions through a misinterpretation of Alberta's privacy legislation. Neither *FOIP* nor *PIPA* stand for the proposition, that schools must limit the information that parents can obtain about their children. Respectfully, it would be an error in law to interpret either *FOIP* or *PIPA* as requiring schools to limit all information from parents about their children, irrespective of the age of the child. Rather, *PIPA* and *FOIP* mandate the restriction of information in regard to mature minors, which is a concept in harmony with the *School Act*, as well as the *Health Insurance Act* and other Alberta legislation.

112. Given the absence of a definition of GSAs in the *School Act*, and in view of the evidence of inappropriate materials and advice being presented to children in and through GSAs, the legislated restriction on information from parents, and the fact that children will be subjected to sexual propaganda from non-medically trained activists (first and foremost to the teaching that a child might "transition" to another sex), the profound negative effects GSAs have had on children's psychological integrity and the likelihood that other children will be similarly affected, and the real risk of abuse to children in school groups or activities particularly where parental oversight is excluded, the Applicants request that this Court stay the operation of Impugned Sections pending the determination of the final determination of their constitutionality.

113. 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 requiring schools to limit the information that can be provided to their children, even children as young as five. 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 many other vulnerable children like her who need their parents support and knowledge of their circumstances. The balance of convenience is with parents and children.

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th day of June, 2018.

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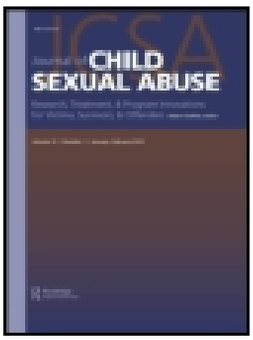
Jay Cameron
Counsel for the Applicants

TAB 1



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The Prevalence of Sexual Abuse by K-12 School Personnel in Canada, 1997–2017

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The Prevalence of Sexual Abuse by K-12 School Personnel in Canada, 1997–2017

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ABSTRACT

Studies surrounding the sexual abuse of children by school personnel in Canadian contexts are infrequent and often limited in their scope. The present study addresses this drawback with a contribution of data gathered from disciplinary decisions of educator misconduct, media reports, and published case law concerning child/student sexual abuse cases (between 1997 and 2017) that involved any individual employed (or formerly employed) in a Canadian K-12 school. The study revealed a number of interesting points about the larger student victim and offender demographic patterns and characteristics across Canada. The study found 750 cases involving a minimum of 1,272 students and 714 offenders, 87% of which were male. Moreover, 86% of all offenders were certified teachers, and offenders employed grooming as the main tactic in 70% of the cases. Of the child/student victims, 75% were female, 55% were sexually abused on school property, and more than two-thirds of all victims were in high school at the time the offense was committed. The study also found that excluding Ontario and B.C., the media was the sole source of information for 50–86% of all cases depending on the province/territory. Finally, almost three-quarters of offenders from the study were charged with at least one criminal offense, and of the cases that proceeded to trial, 70% resulted in findings of guilt.

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Introduction

Although there are some notable studies from the United States (e.g., Knoll, 2010; Ratliff & Watson, 2014; Shakeshaft, 2013; Shakeshaft & Cohan, 1995), studies surrounding the sexual abuse of K-12 students by school personnel in Canadian contexts are comparably limited (Ratliff & Watson, 2014). Furthermore, because Ontario, British Columbia (B.C.), and Saskatchewan are currently the only three provinces that publish the details (and data) surrounding cases of professional misconduct,[1] most of the recent analytical Canadian studies that do exist, although informative, often focus solely on sexual abuse by teachers in one of these provinces (e.g., Dolmage, 1995; Jaffe et al., 2013; Moulden, Firestone, Kingston,

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& Wexler, 2010; Shewchuk, 2014, 2017; Winters, Clift, & Maloney, 2007). The present study addresses this drawback with a contribution of data gathered from sexual abuse cases that involved any individual employed in a Canadian K-12 school, rather than from a single province or to circumstances surrounding certified teachers only.[2] To this end, in addition to disciplinary decisions of educator professional misconduct published by the Ontario College of Teachers (OCT), the British Columbia Ministry of Education Teacher Regulation Branch (BCTRB), and the Saskatchewan Professional Teachers Regulatory Board (SPTRB), two other main sources of information were examined to achieve the intended pan-Canadian focus: media reports and reported criminal case law.

There are two main objectives of this study: first, the compilation of as comprehensive and complete an inventory as possible, which catalogues the details of sexual offenses committed or allegedly committed by employees of K-12 schools across Canada over the last 20 years. The second is to analyze and interpret the data from this inventory in order to provide a better understanding of a number of issues, including the larger victim and offending school personnel demographics, patterns of discovery/disclosure, the range of disciplinary actions taken against teachers, patterns surrounding the schools employing offenders, the coverage of cases by the media, and the legal consequences for offenders.

The age of protection and sexual offenses against children

In Canada, there are a number of criminal offenses that protect against sexual violations of children by adults and/or those in a position of trust or similar relationship. In terms of in-person offending, the *Criminal Code of Canada* (the "*Criminal Code*") prohibits the offenses of sexual interference (sexual touching of a child under 16) (section 151), invitation to sexual touching (inviting a child under 16 to engage in some form of sexual touching) (section 152), and sexual exploitation of a young person (section 153), among others. With the evolution of technology, new offenses have been added to the *Criminal Code* to address online risks to children, including the online luring offense, which prohibits electronic communications with children that are designed to facilitate a sexual offense against the child (section 172.1).

Criminal offenses protecting children from sexual abuse and exploitation are predicated on the age of protection—the age at which a child can legally consent to sexual activity—as well as the nature of the relationship between the child and the other person. The age of protection in Canada is generally 16 years old, but the *Criminal Code* increases that age to 18 in the context of certain relationships. Pursuant to section 150.1 of the *Criminal Code*, no child under 12 can consent to sexual activity, and children under 16 can only consent to sexual activity within certain age limitations and provided there is no relationship of trust, authority, dependency, or exploitation. The "close-

in-age" exceptions in section 150.1 of the *Criminal Code* seek to permit sexual activity within sensible bounds. Historically, the age of protection was 14 and it was not until 2008 that the age of consent was raised to 16 (Bill C-2, 2007, *Tackling Violent Crime*). Prior to 2008, a set of major reforms to the criminal laws governing consent and sexual activity with persons under 18 occurred in 1988, following the 1984 *Badgley Report*. The recommendations in the *Badgley Report* resulted in several changes to the *Criminal Code*, including the introduction of the in-person offenses mentioned above.

From age 16 onward, there are no strictly age-based bars on sexual consent, but the sexual exploitation offense (section 153) in the *Criminal Code* steps in to guard children ages 16 and 17 in certain scenarios. As alluded to, the offense was introduced in 1988, as part of the legislative reforms that followed the *Badgley Report*. This report recommended that certain classes of individuals (e.g., teachers) be specifically prohibited from engaging in sexual conduct with persons under 18. Parliament did not follow the recommendation to prohibit certain classes of individuals, but instead used the categories of trust, authority, and dependency to delineate the relationships within which a 16- or 17-year-old child cannot legally consent to sexual activity. This decision to use categories instead of specific classes has been interpreted as meaning that Parliament "intended to direct the analysis to *the nature of the relationship* between the young person and the accused rather than to their *status* in relation to each other" (R. v. Audet, 1996, 2 SCR 171 at para 34 (SCC)).[3] The Supreme Court of Canada has recognized that "in the absence of evidence raising a reasonable doubt on this point, teachers are necessarily in a position of trust and authority towards their students" (R. v. Audet, 2 Supreme Court of Canada, 1996, 2 SCR 171 at para 44 (SCC)).

The combined effect of sections 150.1 and 153 of the *Criminal* Code is that if a person is in a position of trust or authority (e.g., a coach, teacher, etc.) over any child between the ages of 12 and 17, if the child is dependent on that other person, or if the relationship is exploitative of the child, that child is not able to legally consent. In these situations, only a person age 18 or older is capable of consent. The increased age takes into account the inherent vulnerability of the child and is meant to protect them in situations that involve a power or other imbalance.[4] Overall, the *Criminal Code* contains a number of offenses to address in-person and online sexual offenses against children. For this reason, an analysis of criminal case law was reviewed for this study, and media articles reporting on charges, convictions, and sentences were also analyzed.

Teacher professional misconduct of a sexual nature involving children

Professional misconduct is the term used in education to refer to acts (including the sexual abuse of students) and situations that may result in

professional sanction of certified teachers.[5] The act that constitutes professional misconduct may or may not also be an offense under the *Criminal Code*. Although every territory/province's teacher organization has their own definition of what constitutes professional sexual misconduct, because the OCT, BCTRB, and SPTRB are the only three bodies that publish their misconduct decisions, it is how they define professional misconduct of a sexual nature that is most relevant for the present purposes. Professional misconduct includes when a student is sexually abused by a teacher. Broadly defined by the OCT, such abuse, which could involve a teacher's own students or other students at the school, may include "sexual intercourse or other forms of physical sexual relations between the member and a student, touching, of a sexual nature, of the student by the member [i.e., contact offenses], or behaviour or remarks of a sexual nature by the member towards the student [i.e., noncontact offenses]" (Ontario College of Teachers, 2002, p. 1). The OCT makes it clear that there are forms of sexual misconduct that may not technically fall within the definition of sexual abuse, but which can still be considered professional misconduct. Some common examples of misconduct that fall into this category include any inappropriate relationship with a student, student–teacher boundary violations, and grooming behavior (Ontario College of Teachers, 2002).

In B.C., professional misconduct occurs when a teacher acts contrary to the *Standards for the Education, Competence and Professional Conduct of Educators in BC* established by the Ministry of Education. Of the eight standards to which all B.C. educators need hold themselves, the transgression of Standard 1 is cited most often in disciplinary decisions relating to sexual misconduct (British Columbia Ministry of Education, 2012). The relevant section of Standard 1 states that "educators have a privileged position of power and trust…Educators do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage" (British Columbia Ministry of Education, 2012, p. 4).[6] Although less explicit than the OCT's description of what constitutes professional misconduct, the regulation here is both clear and inclusive in its meaning. Finally, what qualifies as professional misconduct of a sexual nature involving children for Saskatchewan teachers can be found in SPRTB's *Regulatory Bylaws* (2.01) and includes "(a) conduct which is harmful to the best interest of pupils; (b) any intentional act or omission designed to humiliate or cause distress or loss of dignity to any person in school or out of school which may include verbal or non-verbal behavior;…(d) sexually abusive conduct that violates a person's sexual integrity, whether consensual or not which includes sexual exploitation" (Saskatchewan Professional Teachers Regulatory Board, 2015).

Teachers found guilty of professional misconduct of a sexual nature face a range of possible punitive actions. At one end of the disciplinary spectrum an offender may receive a simple reprimand, and at the other is the complete

and permanent revocation/cancellation of one's teaching certificate of qualification. In between (or often in addition to) these possibilities, one may receive as punishment a monetary fine, suspension, professional counseling, classes on appropriate boundaries, and/or a psychiatric assessment. Whatever the penalty, almost without exception, teachers in Ontario, B.C., and Saskatchewan found guilty of professional misconduct will find their name and details of the offense published on their organization's Web site.

The study

To answer the question of just how prevalent sexual misconduct by personnel working in Canadian K-12 schools has been over the past 20 years, parameters for inclusion of relevant data are required. To be included in this study, an offender or alleged offender needed only to satisfy three conditions: that they worked (or work) in a Canadian primary, middle, or secondary school; that they were found guilty of professional misconduct involving the sexual abuse of children/students and/or were charged with a sexual criminal offense involving children/students; and that they committed or allegedly committed the offense or misconduct between 1997 and 2017.[7]

An offender's sexual abuse case was included in this study only if the offending individual worked (or works) at a primary, middle, or secondary school in Canada.[8] Although teachers represent the largest group of individuals working in any given school—and thus, they also comprise the study's largest group of offenders—other school personnel found offending against children included educational assistants, custodians, school bus drivers, student teachers, principals and vice principals, guidance counselors, support staff, and school volunteers. If a former or retired teacher committed a sexual offense against any child (i.e., when they were no longer teaching) and/or was retroactively disciplined by a regulatory body, they were included because of the risk they may have posed to students at the time of their employment in a school environment.[9] Thus, any sexual offenses committed against children by an offender during or after their tenure of employment at a Canadian school were included in this study.

The second condition for inclusion in the study is that an offender was found guilty of professional misconduct involving the sexual abuse of children (applicable to certified teachers) and/or was charged with a criminal offense involving the sexual abuse of children (applicable to all school personnel). The choice was made to include instances where school personnel were *charged* with a sexual crime involving children and not exclusively those where individuals were *convicted* in a court of law. Consequently, the data employed in this study also include those cases where alleged offenders saw their charges stayed and/or withdrawn, as well as cases of individuals who were acquitted. The choice to include information about any school

personnel charged with a sexual offense against children will also permit a fuller understanding of how charges involving school employees tend to come to the attention of and proceed through the criminal justice system.

The final condition for inclusion in the study is that the sexual offense involving children committed in Canada by a K-12 school employee occurred between 1997 and 2017. This 20-year span was chosen, not only as a manageable, if precise, period of time, but also because it becomes increasingly difficult to find reliable data (especially media and disciplinary decisions) prior to the late 1990s. This period also allowed for an analysis of how technology was utilized in these cases.

Again, the data set of offenders and sexual offenses meeting these three conditions was assembled from information collected from three sources: disciplinary decisions of professional misconduct (published by the OCT, BCTRB, and SPTRB), cases appearing in the media, and reported Canadian criminal case law.[10] Every individual published disciplinary decision regarding teacher professional misconduct was reviewed to determine whether it met the criteria for inclusion in the study. An Internet search of the teachers and cases was then performed to see whether their case had been reported by the media, and if so, any relevant supplementary information was added to the data set. Having exhausted the information obtainable from the disciplinary decisions, the next step in the data collection process was a media search for other offenders. In addition to a general Internet search, a number of different databases and digital archives were employed (e.g., NewspaperARCHIVE.com, Canadian Reference Centre (EBSCOhost), pressreader.com, Canadian Major Dailies (ProQuest), Google News). As the media stories yielded much useful data from across the country about a wide range of school personnel sexually offending against children, it is clear how the media search was integral to meeting the larger objectives of the study.

Once cases were compiled from disciplinary decisions and media articles, a search of the reported Canadian case law was performed using the databases of three Canadian legal research service providers (WestlawNext Canada, Lexis Advance, and CanLII.org). The case law search covered cases reported that pertained to a criminal offense or allegation that occurred in 1997 or later. Given the high levels of accuracy and detail associated with judicial reasons, if an offender had previously been identified through a disciplinary decision and/or media article, the information from the legal decision was used to supplement that previously located (or replace in the case of an inconsistency). For cases with a reported legal decision, the features of the legal database were utilized to locate any appeals. Because of the large number of offenders in the database, however, it was not feasible to perform a specific check of each case for an appeal. For some recent cases, the appeal period was still open at the time the cases were gathered. One other limitation in the data pertaining to criminal proceedings is that a case law search

was not performed for criminal cases in Quebec, owing to issues of time and translation.

The results

Collectively, the search of disciplinary decisions, media sources, and criminal case law yielded a total of 750 cases of sexual offenses against children carried out (or allegedly carried out) between 1997 and 2017 by 714 employees working in Canadian K-12 schools.[11] The data collected from these sources included information about victims (sex, age, disclosure/discovery, vulnerabilities, relationship with offender), offenders (e.g., sex, age, career details), the offense (e.g., nature of offence, tactics employed by offender, date and location of offence, use of technology), and the professional and legal consequences (e.g., disciplinary and criminal cases, charges, sentences).

Target/victim demographics

When the minimum number of children and their sex are known (N = 1,149), 75% of the victims in all the cases explored were female and 25% were male (see Table 1).[12] When the sex of the victims was examined by the general type of offense—contact (N = 859) and noncontact offenses (N = 290)—the data show that females represented 75% of all contact victims and 77% of all noncontact victims. When looked at in terms of cases (as opposed to individual students), where the sex of the student is known (N = 612), 72% of the cases involved solely female students, 26% involved only male students, and 2% involved both male and female students. The mean age of victims at the time the abuse or misconduct began was 14.02 years (mode = 17 years) for females and 14.22 years (mode = 16 years) for males. When the ages of female victims are considered by type of school, 14% were elementary-school-aged, 17% were middle-school-aged, and 69% were high-school-aged at the time their abuse commenced.[13] The division for male victims is extremely similar, with the sexual abuse beginning for 11% in

Table 1. Student/child victim demographics.

Variables	Male	Female	Total N
Total Student/Child Victims	285 (25%)	864 (75%)	1,149 (100%)
Median Age (years)	14.22	14.02	14.07
Student/Child Victims of Contact Offenses	218 (25%)	641 (75%)	859 (100%)
Median Age (years)	13.98	14.00	13.99
Student/Child Victims of Noncontact Offenses	67 (23%)	223 (77%)	290 (100%)
Median Age (years)	15.00	14.11	14.32
Age of Victims by School	163 (23%)	542 (77%)	705 (100%)
Elementary-School-Aged Victims (5–10 years)	19 (11%)	76 (14%)	95 (14%)
Middle-School-Aged Victims (11–13 years)	32 (20%)	90 (17%)	122 (17%)
High-School-Aged Victims (14–18 years)	112 (69%)	376 (69%)	488 (69%)

elementary school, 20% in middle school, and 69% in high school. Seventy-five victims (60% female and 40% male) were described as having certain vulnerabilities, the most common of which included problems at home/with family (25%), personal difficulties (e.g., anxiety, depression, self-esteem issues, suffered previous abuse) (19%), having a disability/special need (18%), and substance abuse issues (10%).

In those cases where the specific physical location(s) where the sexual abuse was committed is known (N = 414), 55% of incidents occurred on school property (including on the school bus and on school trips), 29% occurred in the offender's residence and/or car, 7% occurred in the victim's residence and/or car, 3% in hotels/motels, and 3% in various other public areas (most often parks).

Offender demographics and tactics

Of the total number of offenders in this study (N = 714), 87% were male and 13% female (see Table 2). Taken together, the ages of all offenders (at the time of the offense) ranged from 19 to 78 years; 42.38 years and 34.96 years was the average age, respectively, for male and for female offenders at the time of the offense. The number of known victims per contact offense case ranged from 1 to 30 students per offender. Furthermore, where the exact numbers of victims abused by offenders were known (N = 616 cases), in 73% of the cases school employees committed a contact offense against a single victim, in 12% they committed offenses against two victims, in 5% they abused three, in 3% four victims were sexually abused by the offender, and in 7% of cases a school employee abused five or more victims. In those contact cases where offenders sexually abused only a single victim, 25% of the employees were female, whereas 75% were male; of those thought to have abused more than one victim, however, only 5% were female, whereas an overwhelming 95% were male school employees.

Because teachers comprise the majority of employees in any given school, when looking at the known primary occupation of all offenders (N = 714), it is not surprising to note that 86% of them were certified teachers. Where known, the ages of female teachers ranged from 24 to 58 years at the time of their offense (28% were in their 20s, 47% in their 30s, 21% in their 40s, and 4% were in their 50s). For male teacher offenders, ages ranged from 20 to 78 years at the time of their offense (10% were in their 20s, 36% in their 30s, 26% in their 40s, 19% were in their 50s, and 9% were in their 60s or 70s).

In addition to those whose primary occupation was teaching, 5% of the offenders were also educators (e.g., educational assistants, student teachers, special needs assistants), 4% were support staff (e.g., lunch monitors, volunteers, secretaries), 3% were custodians, and 2% were school bus drivers. Besides their primary occupation in a K-12 school, many offenders also had secondary

Table 2. Offender demographics.

Variables	Male	Female	Total N
Total Cases	657 (88%)	93 (12%)	750 (100%)
Contact Cases	475 (85%)	81 (15%)	556 (74%)
Noncontact Cases	79 (90%)	9 (10%)	88 (12%)
Exclusively Child Pornography Cases	77 (99%)	1 (1%)	78 (10%)
Contact and Child Pornography Cases	18 (90%)	2 (10%)	20 (3%)
Noncontact and Child Pornography Cases	8 (100%)	0 (0%)	8 (1%)
Total Offenders	621 (87%)	93 (13%)	714 (100%)
Median Age (years)	42.38	34.96	41.41
Contact Offenders	458 (85%)	83 (15%)	541 (100%)
Median Age (years)	41.12	34.95	40.17
Noncontact Offenders	86 (91%)	9 (9%)	95 (100%)
Median Age (years)	43.14	35.80	42.44
Exclusively Child Pornography Offenders	77 (99%)	1 (1%)	78 (100%)
Median Age (years)	47.82	31.00	47.60
Offender Occupations	621 (87%)	93 (13%)	714 (100%)
Teacher	532 (87%)	82 (13%)	614 (86%)
Other Educator	27 (75%)	9 (25%)	36 (5%)
Support Staff	27 (93%)	2 (7%)	29 (4%)
Custodian	21 (100%)	0 (0%)	21 (3%)
School Bus Driver	14 (100%)	0 (0%)	14 (2%)
Offender Tactics (by case)	330 (85%)	59 (15%)	389 (100%)
Grooming	220 (80%)	55 (20%)	275 (70%)
Opportunism	89 (97%)	3 (3%)	92 (24%)
Luring	15 (100%)	0 (0%)	15 (4%)
Combination	6 (86%)	1 (14%)	7 (2%)
Type of School Employing Offender (by case)	396 (87%)	61 (13%)	457 (100%)
Public	266 (88%)	38 (12%)	304 (67%)
Catholic/Christian	99 (84%)	19 (16%)	118 (26%)
Private	28 (90%)	3 (10%)	31 (7%)
Other (First Nation, Jewish)	3 (75%)	1 (25%)	4 (<1%)

occupations (N = 138), which provided them further access to students/children (Colton, Roberts, & Vanstone, 2010; Ratliff & Watson, 2014). Most notably, at 50%, youth-sports coaches (at schools and in the community) by far comprised the largest group of known secondary occupations, followed by tutors (13%). Other popular secondary occupations included community youth workers or volunteers (10%), guidance counselors (3%), babysitters (2%), and magicians (2%).

Patterns of sexual offenses

Broadly defined, the study identified two main types of tactics employed (alone or in combination) by offenders to gain sexual access to students/children: grooming and opportunism.[14] Grooming is "a conscious, deliberate, and carefully orchestrated approach used by the offender" (Knoll, 2010, p. 374), which involves manipulating the perceptions of children and adults around children to gain their trust and cooperation. It is also used to normalize 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. An opportunistic offender, on the other hand, is more likely to take advantage of a given situation to sexually abuse children. These offenders can take less time and have less of an emotional investment than those who groom victims and are likely to have been convicted or accused of committing one-time sexual assaults against their victim(s) (e.g., inappropriate touching).

Not including cases concerning solely child pornography offenses, and where known (N = 389), grooming behavior was identified in 70% of the cases, opportunism in 24% of the cases, luring in 4%, and the remaining 2% of cases involved some combination of these tactics (see Table 3). Perpetrators practiced these tactics in their effort to gain sexual access to children, resulting in the commission of different types of offenses (committed alone or in combination). Of the 750 total cases, 74% were classified as involving contact offences, 12% involved solely noncontact offenses (e.g., criminal offenses such as voyeurism or luring, professional misconduct such as inappropriate sexual behavior or comments), 10% involved exclusively child pornography offences,[15] 3% of cases involved offenders in possession of child pornography who also committed a contact offense, and the final 1% of cases involved noncontact offenders who were also found in possession of child pornography (see Table 2).

When contact offenses were committed and the type of tactic is known (N = 321 cases), 73% involved offenders exhibiting grooming tactics, 26% opportunistic behavior, and 1% employed a combination of both. Male school employees were identified as offenders in 85% of all contact cases (male contact offenders had a mean age of 41.12 years); 81% of their victims were females with an average age of 13.95 years and 19% were male with an average age of 13.01 years (see Table 2). Female school personnel comprised the remaining 15% of contact offenders (female contact offenders' average age was 34.95 years); 84% of their victims were males averaging 15.20 years and 16% were female victims averaging 15.63 years. The offender and victim data for noncontact offenses differ only slightly from contact offenses. For example, males (average age of 43.14 years) were responsible for 91% of all noncontact offenses; 81% of their victims were females averaging 14.11 years old and the remaining 19% were male victims with an average age of 14.75 years. Female offenders (with an average age of 35.80) committed only 9% of all noncontact offenses, in which 75% of the victims were males with an average age of 15.67 years.[16]

Table 3. Tactics employed to gain sexual access to children/students.

Variables (where known)	Grooming	Opportunistic	Luring	Combination	Total N
Total Cases by Known Tactics	275 (70%)	92 (24%)	15 (4%)	7 (2%)	389 (100%)
Contact Cases by Known Tactic	233 (73%)	82 (26%)	-	6 (1%)	321 (100%)
Use of Technology by Offender in Cases with Known Tactic	71%	13%	-	-	100%

Not including the exclusively child pornography cases, where specified, some sort of communication technology was employed by offenders in 49% of the cases. The type of technology used alone (or most often in combination) included e-mail, texting, social media, "electronic communication," chat rooms/video chat, instant messaging, and the telephone. When comparing the use of technology to the type of case and tactics employed, the data show that technology was employed by the offender in 40% of the contact cases and in 81% of the noncontact cases. Moreover, technology was used in 71% of cases where grooming was the primary tactic employed and in only 13% was opportunism the main tactic (see Table 3). Finally, it is clear that as technology improves and becomes more readily available over time, it is being used more often by school personnel as they seek access to students. For example, whereas technology was used by offenders only in 42% of all cases before 2010, this number rose to 60% of all cases in 2010 and after, and to 83% of all cases in 2016 and after.

K-12 school personnel suspected or found guilty of exclusively child pornography offenses included 77 males and one female. The mean age of these individuals was 47.57 years—noticeably higher than those suspected of contact offenses—whereas their primary occupations include mostly certified teachers (73%), principal/vice principals (8%), custodians (6%), and educational assistants (4%). Because child pornography and the online sexual exploitation of children remain growing problems, especially with technology continuously evolving and improving, it was initially expected that the cases of those suspected or found guilty of exclusively child pornography offenses would be among the most recent in this study. This, however, was not the case; instead, the data revealed that 49% of these cases belong to the period 1997–2007, whereas the remaining 51% occurred between 2008 and 2017. One final and significant discovery involves those school personnel suspected or convicted of both contact and child pornography offenses (18 males, two females). Specifically, we see that in 60% of the cases, these individuals (all males) committed sexual contact offenses against more than one victim.

Discovery and disclosure of sexual abuse

The data demonstrate that victims disclosed their sexual abuse (i.e., told someone after which the abuse was brought to light) in 53% of the cases where information about the disclosure or discovery of the sexual abuse is known ($N = 253$). In the remaining cases, the abuse was discovered by a third party. Of the victims who disclosed abuse and whose sex is known ($N = 133$), 75% were female and 25% were male. The mean age of females when they disclosed was 15.69 years and 64% of female victims disclosed within one year of abuse. The mean age of the male victims at the time of disclosure was slightly older at 17.39 years, and 67% disclosed their abuse within one year of the incident. The data show a

Table 4. Recipients of victims' disclosure.

Recipients of Female Victims' Disclosure		Recipients of Male Victims' Disclosure	
School Personnel	33%	Friends	25%
Parents	23%	Parents	22%
Friends	15%	School Personnel	19%
Police	14%	Other	16%
Medical Professional	13%	Girlfriend or Partner	9%
Other	2%	Sister	9%

number of third parties to which and to whom male and female victims disclosed their sexual abuse at the hands of the various school employees (see Table 4). The most common recipients of disclosure for female victims included other school personnel (33%), parents (23%), friends (15%), police (14%),[17] and medical professional (13%). For males, we see disclosures made to friends (25%), parents (22%), other school personnel (19%), girlfriend or partner (9%), and sister (9%).

Excluding individuals with exclusively child pornography offenses, where known, it appears that the sexual abuse in only 47% of the cases was discovered by a third party. Where the details of the cases are known, the discoverers of sexual abuse included parents (many of whom checked phones or computers when suspicious of their children's behavior) (37%), fellow school employees (including cleaning staff after hours, or by those whose suspicions had been raised) (19%), friends/other students (18%), other (e.g., often members of the public reporting suspicious activity) (17%), other relatives of the victim (6%), anonymous letters/tips (2%), and suspicious members of the offender's family/friends (1%). All these ways in which abuse has come to light are consistent with those outlined in Shoop's seminal work, *Sexual Exploitation in Schools. How to Spot It and Stop It* (2004).

Teacher organization disciplinary actions

Where known (N = 488), disciplinary action was taken in 84% of the cases involving teachers (see Table 5). When known disciplinary actions against teachers are examined geographically, the study shows that 68% of the cases come from Ontario, 26% from B.C., 3% from Alberta, 2% from Saskatchewan, 1% from Nova Scotia, and less than 1% from both Manitoba and the Northwest Territories.

The most frequent disciplinary actions included the following professional sanctions: 67% had their teaching certificate cancelled, revoked, or never to be renewed; 13% received some combination of reprimand, suspension, fine, counseling, psychiatric assessment, and/or courses on professional boundaries; 10% agreed to resign during the disciplinary hearing after which their teaching certificate was cancelled; and 10% received only a reprimand, suspension, or agreed to relinquish their certificate.

Table 5. Disciplinary decisions and media representation by province and territory.

Variables	BC	AB	SK	MB	ON	NB	PE	NS	NL	YT	NT	NU
Teacher Disciplinary Decisions (%)	26	3	2	>1	68	0	0	1	0	0	>1	0
Cases Where Media is the Only Source of Information (%)	15	72	54	86	26	70	75	67	67	0	50	75

School demographics

Where the type of school employing (or having employed) offenders is known (N = 458), the data show that 5% of the offenders were employed at complete schools (K-12), 16% at elementary schools, 8% at elementary-middle schools, 7% at middle schools, 2% at middle-high schools, and 62% worked at high schools. When the affiliation of the school employing any offender is known (N = 457), 67% worked in public schools, 26% in Catholic schools, 7% in private schools, and less than 1% worked in other types (e.g., Jewish, Christian, First Nations) (see Table 2). When it is known in which province/territory each school employing a sexual offender is located (N = 733),[18] the data demonstrate that 60% were found in Ontario and 18% in B.C.—the most and second most, respectively. Because of the nature of the evidence available—specifically, the misconduct decisions published almost exclusively by the OCT and BCTRB—these two provinces will naturally have the highest and most disproportionate number of schools employing offenders in this study. There is a more even distribution of the locations of schools employing offenders across the country when Ontario and B.C. are excluded from the analysis (n = 161): 40% were located in Alberta, 16% in Saskatchewan, 14% in Manitoba, 12% in Nova Scotia, 6% in New Brunswick, 4% in Newfoundland and Labrador, 2% in Prince Edward Island, 2% in the Northwest Territories, 2% in Nunavut, and less than 1% in Yukon. It is significant that this distribution aligns almost perfectly with the overall provincial and territorial populations—based on the *2016 Census* published by Statistics Canada (2017), the sequential list of provinces/territories by population size is, with only a single exception,[19] identical to the study's list showing the proportion of where sexual abuse is being committed by province/territory (Statistics Canada, 2017). This is an important, if easily overlooked, point because it suggests that the data employed in this study for the territories and provinces other than Ontario and B.C. are proportionate.

Media coverage

The inclusion of media sources was a crucial methodological consideration, because such stories very often provided crucial demographic and narrative data. Indeed, the media reported details surrounding 71% of the 750 sexual abuse cases committed against children by school personnel over the last

20 years employed in the study. What most demonstrates the importance of media sources to this study is the fact that in 35% of the total cases, the media was the only source of information available. When the information provided solely by the media in these cases is explored by province/territory, its value to this pan-Canadian study is much more readily appreciated (see Table 5). For instance, the media alone is responsible for providing information about 86% of all the cases known from Manitoba, 75% of cases from Prince Edward Island, 75% of cases from Nunavut, 72% from Alberta, 70% from New Brunswick, 67% from Newfoundland and Labrador, 67% from Nova Scotia, 54% of cases from Saskatchewan, 50% of all cases known from the Northwest Territories, but only 26% of cases from Ontario and only 15% from B.C.

Because the media provided such invaluable data, the study was concerned about any potential media bias. To determine whether there was any evidence to suggest a disproportionate reporting on certain types of offenses and/or offenders, the study looked at the frequencies of three variables reported in the media: stories involving female offenders; reports where the affiliation of the school employing an offender is known; and stories where the type of school employing an offender is known. Subsequent analyses demonstrated no discernible media bias or propensity toward sensationalism (with the exception of some unnecessarily salacious headlines) surrounding the sex of the offender or the affiliation and type of school in which they were employed.

Legal consequences for offenders

Of the 750 cases explored in this study, 547 (73% of the cases) saw the offender charged with at least one criminal offense, and in 388 cases (52%) multiple criminal charges were brought against the offender. In 40 cases (5%), offenders were charged with 10 or more offenses; the highest known number of charges for a single individual was 95.[20] The criminal charges covered the spectrum of sexual offenses involving children, of which the contact offenses of sexual assault (48% of the cases), sexual exploitation (47% of the cases), and sexual interference (31% of the cases) were the most common charges (see Table 6). In terms of noncontact offenses, 20% involved individuals being charged with a child pornography-related offense and 12% involved charges of online luring.

Based on all available sources of evidence, of the cases where a criminal decision is known (N = 420), 328 (78%) school employees were convicted of (or pleaded guilty to) at least one offense. In total, 213 cases involved a guilty plea; 165 proceeded to trial, of which 115 (70%) resulted in findings of guilt and 50 (30%) cases resulted in an acquittal. In 42 (10%) cases, the charges were stayed or withdrawn (see Table 6).

Table 6. Legal consequences of offenders.

Known Outcome	Number of Cases	Percentage
Total Cases	420	100%
Guilty	115	27%
Guilty Plea	213	51%
Acquittal	50	12%
Charges Stayed/Withdrawn	42	10%
Most Common Criminal Charges	**Individuals Charged**	
Sexual Exploitation	260	
Sexual Interference	172	
Sexual Assault	262	
Invitation to Sexual Touching	80	
Child Pornography Offense	139	
Online Luring	67	
Making Sexually Explicit Material Available	14	
Voyeurism	8	

Sentencing is a very case-specific exercise, and the length of sentence depends on a variety of factors including the seriousness of the offense, the number of charges, and the personal circumstances of the offender. For most cases, the maximum sentence in the *Criminal Code* for sexual offenses against children is currently 14 years if the Crown proceeds by indictment or two years less a day if the Crown proceeds summarily. Sentences have been increasing in recent years, particularly since the introduction of the mandatory minimum sentences for most sexual offenses against children. The sentences associated with the early cases in this study may not, therefore, be representative of the type of sentence that would be imposed today.

Analysis was completed for the 328 cases in which an offender was convicted of or pleaded guilty to at least one offense against a child. Because sentencing is a separate procedure from the trial, however, sentencing information was not always known, so the number of cases for which sentencing information was available is 294 (see Table 7). In this analysis, the two-year sentence mark was chosen because of the distinction in the type of custody accompanying terms under two years or more than two years in custody. Sentences of two years or more are served in a federal penitentiary, which is considered harder time and tend to have a population comprising those who have committed more serious crimes. In the cases where the sentence is known, 21% school employees received a custodial sentence of two years or more, 50% received a custodial sentence of less than two years, and 29% received noncustodial sentences.

The longest sentence was 14 years and was imposed on a convicted teacher who had multiple victims and a combination of contact offenses and child pornography charges. Less-serious sentences included absolute discharges, conditional discharges, suspended sentences, conditional sentences, and brief custodial sentences as low as one day. As mentioned, due to the timeframe of

Table 7. Sentences for cases of offenders found or pleaded guilty.

Type of Sentence	Total No. of Cases
Custodial Sentence (Longer than Two Years)	62 (21%)
Custodial Sentence (Less than Two Years)	146 (50%)
Noncustodial Sentence	86 (29%)

the study, the results above may not reflect current sentencing practices. For example, in light of the introduction of mandatory minimum sentences, the noncustodial sentences, which comprise almost one-third of known sentences in the data set, would for the most part be unavailable for an individual who committed a sexual offense against a child more recently.

Victim impact

As part of the sentencing process, victims are able to file a victim impact statement with the court, detailing the ways in which they have been, and often continue to be, affected by the crime(s) committed against them. Victims can choose to read their own statement out loud in court or the statement can be read into the court record. Excerpts of victim impact statements are sometimes quoted or summarized in a written decision for a case; thus, this section reports on statements seen in cases with a reported sentencing decision. In almost all of the statements referred to, victims reported suffering from serious and long-lasting emotional consequences, including clinical depression and feelings of shame, worthlessness, and fear, to name only a few. Notably, those victims who may have believed they were in a romantic relationship with the teacher or school employee commonly expressed having come to realize the harm done to them. In the time between the sexual abuse and sentencing, many of these victims, in their words, developed a sense of having lost their childhood and an understanding that the relationship was manipulative or exploitative. Overall, many of the victims sought some form of therapy or counseling, sometimes at their own cost. The impact of the crime(s) on victims' relationships with other people was also addressed in many of the statements, with victims often reporting that their relationships with other people, including romantic partners, family members, and/or friends, had been harmed. Some victims also described an adverse impact on their schooling and/or employment; in some cases, victims reported having to transfer to another school, not finishing high school, or being unable to maintain full-time employment as a result of the crime(s) committed against them. Finally, it is also worth noting that in a number of cases, one or several family members of the victim(s) also filed a victim impact statement. These family members also reported serious impacts, including a loss of trust in the education system and disrupted family life resulting from having to help their child through this period and/or accommodate a switch in schools.

Conclusion

To increase our understanding of just how prevalent sexual misconduct by personnel working in Canadian K-12 schools has been over the past 20 years, this study explored data gathered from cases where offenders have presented a potential or realized risk to children. In the interest of making the data set as accurate, comprehensive, and representative as possible, data were collected from disciplinary decisions of educator misconduct, media reports, and case law concerning sexual abuse cases (between 1997–2017) from across the country that involved any individual employed in a K-12 school. The data from 750 cases involving some 1,272 victims and 714 offenders were analyzed and revealed a number of interesting points.

In a study on teacher sexual misconduct from Ontario published in 2013, the authors concluded that "the overwhelming pattern appears to be the abuse of vulnerable teenage girls by male teachers who employ extensive grooming behaviors that include paying special attention to victims and building relationships with them through technology" (Jaffe et al., 2013, p. 34). This is an observation that also best describes some of the patterns observed in this study. Indeed, 75% of the victims in the cases explored were female with an average age of about 14 years, in 70% of the cases grooming was the main tactic, and technology was increasingly used by offenders over time, especially as part of the grooming process The study has shown that, overall, perpetrators of the sexual abuse were 87% male and 13% female, with mean ages of around 42 and 35 years, respectively. In 70% of the contact cases, grooming tactics were employed by offenders, and in 71% of the cases where grooming behavior was identified, communication technology was used by the offender. Moreover, although it was not surprising to find that 99% of K-12 school personnel suspected or found guilty of exclusively child pornography offenses were male, what was surprising was that the mean age of these individuals was around 48 years—noticeably higher than those males suspected of contact offenses (41.12 years). A further significant, if disturbing, observation was the realization that 60% of school personnel suspected/convicted of both contact and child pornography offenses had committed sexual contact offenses against more than one victim.

The inclusion of media sources was a crucial methodological consideration in this study, and considering its chronological scope, it was surprising to discover that details surrounding more than 70% of the total cases of sexual abuse committed against children by K-12 school personnel over the last 20 years were referenced in the media. Besides supplying our database with invaluable demographic and narrative information—or all of the information in 35% of the total cases—the media reports highlighted two significant points. First, the frequency of these reports suggests that incidents involving the sexual abuse of students by school personnel in Canada are being disseminated, and presumably,

more people are coming to realize the magnitude of this problem. At the same time, however, and somewhat paradoxically, the consistency of these reports also suggests that little is being done to curb this problem.

Second is the fact that the media alone is responsible for providing most information about these cases in provinces/territories other than Ontario and B.C.—that is, those areas that refuse to publish details about offenders employed in their schools. The study has demonstrated that it is not that the cases from Ontario and B.C. are overrepresented in the data, but it is that the cases from the other parts of the country are considerably underrepresented. For this balance to be restored, transparency is required, and to achieve this it is imperative that the teacher regulatory bodies in every province, in every territory, should make their disciplinary decisions regarding all professional misconduct (not only that involving the sexual abuse of children) available to the public.

Schools play an integral role in shaping how children view the world and form relationships. The vast majority of adults working in schools are professionals who play a substantial role in shaping children's lives in this vital learning environment. These people, whether teachers, principals, counselors, educational assistants, custodians, or bus drivers, have unique access and relationships with children and their families, the foundation of which is trust (Mcalinden, 2006). The betrayal of trust that occurs when a school employee commits sexual offenses against children has lasting impacts on the victims. If for no other reason than this, parents should have the right to know about any professional transgressions by the person spending so much time with their children. Finally, because an offender might be guilty of sexual misconduct involving a student/child, but not be charged with a crime (and thus one's criminal record may remain clean), such lists could provide the valuable information to inform employers about the past activities of prospective employees. Indeed, offenders are at their most dangerous "when their deviant sexual behavior remains hidden" (Mcalinden, 2006, p. 353).

Notes

1 Professional misconduct, the term used in education to refer to acts (including sexual abuse) that may result in sanction for teachers, is explained in more detail below. Although the B.C. College of Teachers, the former professional self-regulatory body for teachers in the province, was closed in 2012, it was replaced by the British Columbia Teacher Regulation Branch (part of the provincial Ministry of Education), which, along with the Ontario College of Teachers and the Saskatchewan Professional Teachers Regulatory Board, remain the only three bodies that continue to publish cases of teacher misconduct.

2 To teach in a K-12 school in Canada, one must receive certification from an appropriate issuing body: either the provincial governments or a self-regulatory organization.

Ontario and, most recently, Saskatchewan are the only examples of the latter in Canada.

3 Emphasis original.

4 According to Parliamentary debates around amendments to the sexual exploitation offense, the offense recognizes that "all young persons are vulnerable to sexual exploitation" (Wilfert, 2004) and "a young person can never consent to be sexually exploited" (Cotler, 2005).

5 Whereas the employment of any personnel working in a K-12 school (including teachers) can be terminated, only certified teachers can be investigated/disciplined regarding professional misconduct by the body that issued their certificate.

6 The word "students" here is defined as "a person enrolled in a K-12 educational program provided by a board of education, authority or First Nations School and for whom an educator has responsibility," whereas a "minor" is "a child or youth under the age of 19" (British Columbia Ministry of Education, 2012, p. 3).

7 When the word "offenders" is encountered in this paper, please understand this to include both offenders and alleged or suspected offenders. Similarly, all incidents of sexual abuse should be read as "sexual abuse/alleged abuse"—both phrases were shortened to "offenders" and "abuse" in the interests of space and readability. Finally, although the overwhelming majority of victims in this study were students, (84%) unless specified, the terms "students" and "children" should be read as synonyms.

8 Traditionally, Canadian primary (or elementary) schools include Kindergarten to Grades 5 or 6; middle (or junior high) schools include Grades 6 or 7 through 8 or 9; and secondary (or high) schools include Grades 9 or 10 through 12. Between 1988 and 2003, secondary school students in Ontario who planned to attend university were required to take several Ontario Academic Credit courses during their fifth year (colloquially known as Grade 13).

9 In other words, because it is unlikely that an offender would develop a sexual interest in children late in life, we maintain that even if they only acted on this interest upon retirement, they still posed a risk to students in their care during the time of their employment. In any event, of all the teacher offenders in this study, only 2% were retired at the time they committed a sexual offense against a child.

10 Including only those decisions and media articles published before February 1, 2018.

11 Because some offenders committed more than one offense, the number of offenses committed is greater than the number of offending individuals.

12 Owing to issues of privacy and publication bans surrounding cases, it was not always possible to determine the precise number of victims and/or their sex and age. The minimum number represents where certain demographic details are confirmed. Thus, although in total the study found a minimum of 1,272 victims, the available evidence could only confirm the sex of 1,149 of them.

13 Although approximations, the following age divisions by school are employed in this study: students are 5–10 years in elementary school, 11–13 years in middle school, and 14–18 years in high school.

14 A third category, luring, appeared in only 4% of the cases. None of these categories applies to those found guilty of or suspected of child pornography offenses exclusively.

15 Although the term "child sexual abuse material" (CSAM) is a more accurate term for images and videos depicting assaults taking place against children, the term "child pornography" (which may minimize the crime or give the impression that the children being abused are complicit in the abuse) is employed in this paper because it is the term used in the *Canadian Criminal Code*.

16 The evidence did not yield the ages of any of the female offenders' noncontact female victims (n = 5).
17 These are the victims who disclosed their abuse to police when they were adults.
18 Quebec is excluded from the following analyses of case law data.
19 The exception is Manitoba, whose population size follows Alberta (Statistics Canada, 2017).
20 According to the media, the criminal decision indicates this offender ultimately pleaded guilty to 10 counts.

Notes on Contributor

The Canadian Centre for Child Protection Inc. is a registered Canadian charity dedicated to the personal safety of all children. Its goal is to reduce child victimization by providing programs and services to Canadians.

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