Report and Recommendations on Gay-Straight Alliances in Alberta Schools
REPORT AND RECOMMENDATIONS ON GAY-STRAIGHT ALLIANCES IN ALBERTA SCHOOLS

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# Report and Recommendations on Gay-Straight Alliances in Alberta Schools

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1.0 Executive Summary

On December 4, 2014 Premier Jim Prentice of Alberta suspended passionate public and Assembly debate on bills addressing the formation of Gay-Straight Alliances (GSAs) in Alberta schools. At the time, he stated unequivocally that public consultation on the issue would occur before legislative debate continued and before any new legislation was tabled on the matter.

The Rocky Mountain Civil Liberties Association (RMCLA) initiated independent, non-partisan public consultations to elicit input from Albertans on the issue of Gay-Straight Alliances, and created a process to seek input from all Albertans — including those both against and for the formation of GSAs in Alberta schools, whether public, separate, charter or private.

Gay-Straight Alliances are voluntary student-centered school clubs open to all students. As with chess, math and knitting clubs, forming, attending, and participating in GSAs is entirely voluntary: There is no mandatory attendance required of any student; it is a club open to all students.

The RMCLA consultation process, which commenced in December 2014 and ended in February 2015, included public hearings held in Calgary and Edmonton at the end of January 2015 for which over 180 people registered to attend. The public consultations produced responses from a broad cross-section of Albertans. RMCLA also received summaries and recommendations from 9 panellists who presided over the hearings in Calgary and Edmonton. During the public hearings the panellists heard from 19 presenters in Calgary and 18 in Edmonton, and considered a broad range of research, legal, and public commentary when drafting their summaries and recommendations.

A separate opinion poll conducted by RMCLA attracted responses from 2,838 Albertans, 628 of whom gave qualitative comments on GSAs, both for and against. Of these, a matched data set was created to reflect the demographics of Alberta and ensure a representative sample, and this resulted in a matched data set of 1,355 Albertans.

The findings of RMCLA’s public consultations on GSAs indicate that Bill 202 and Bill 10 should be withdrawn, and that new legislation should be introduced regarding GSAs based on a few fundamental principles including the need to:

- Respect for the dignity and worth of all individuals,
- Respect for the right of a denominational school to teach or otherwise prescribe religious instruction or exercise,
- Protect minors from abuse, whether physical, psychological or emotional,
• Uphold fundamental freedoms and human rights, with limitations of those freedoms being subject to a “high bar” test consistent with the principles established by the Supreme Court of Canada and other Courts in relation to section 1 of the Charter,

• Recognize and uphold the mature minor doctrine, such that mature minors are included and given decision-making options for important life decision, including the choice of whether or not to participate in GSAs, and

• Require that school authorities allow GSAs in any school in Alberta, and on school property, when permission to form a GSA is requested by students of that school, and

• Stress the voluntary nature of the formation of GSAs (i.e., ‘when requested by a student of the school’) and the voluntary nature of participation in GSAs, including the right that students may choose not to participate.

The public consultation process revealed that there are no deleterious effects upon religious rights, parental rights or authority, or upon separate school privileges in having GSAs held in any school (including public, separate, charter or private), despite pre-emptive allegations to the contrary (for which none of the presenters offered substantiation).

The fear of loss of rights and actual loss of rights are two distinctly different matters, and the research and public consultation process made it evident that GSAs do not undermine or hinder rights. On the contrary, contributors to RMCLA’s public consultations made it abundantly clear that GSAs enhance rights of association, assembly, expression, religion and conscience for those who voluntarily choose to participate in GSAs. Furthermore, input to the RMCLA public consultations revealed that there are no significant deleterious effects upon the right of association, assembly, expression, religious and conscience for those individuals who attend schools where GSAs exist, but choose not to participate therein.

If any real conflict does exist, then it appears to be the manner in which opposing views about rights and various contentious topics are expressed, rather than in the actual subject matter of the objection. Opening debate in schools, and offering guidance about how to express differing views in a way that respects others’ viewpoints — rather than prohibiting debate about particular subjects — was seen to be in the best interests of students and the province’s duty to protect children.

Given the above, RMCLA recommends the simplest revisions possible to the following statutes be considered in drafting new legislation with respect to the topic of GSAs.
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In the Alberta Human Rights Act:
- Add the words “gender identity” as a prohibited ground for discrimination,
- Remove Section 11.1 (the opt-out clause),
  - Do not move section 11.1 to any other statute, and do not reposition it to or reiterate it within any other legislation, and
- Repeal Section 3 of the Alberta Human Rights Act entirely or, at the very least, repeal subsections 3(1)(b) and 3(2).

In the Alberta Bill of Rights:
- Add the words “sexual orientation” and “gender identity” to section 1, and
- Do not add “parental rights” or “parental authority” or equivalent language to the list of rights in this Act or the Alberta Human Rights Act.

In the Education Act:
- Require that all school Boards and other authorities allow GSAs in any school in Alberta that is accredited or otherwise authorized to operate under the School Act (or the Education Act once proclaimed) when permission to form a GSA is requested by a students of any such school;
- Where a school or board refuses or fails in its obligations to establish or permit the establishment of a GSA pursuant to the legislation that school board or school must immediately report that fact to the Minister. The Minister, or the Minister’s designate, would then be obliged to ensure that, acting in the best interest of the requesting student or students, an appropriate club or program is established.
- Permit GSAs to use the name “Gay-Straight Alliance” as part of club names or another name that may include the word “gay” or the word “lesbian”. In other respects students and school administration should be required to work collaboratively to choose respectful and appropriate names for school clubs based on the nature and purpose of such clubs.
- Ensure GSAs are formed on, and their activities are permitted within, the school property that the students requesting the GSA attend; and
- No additional appeal clause is necessary. Where any appeal is authorized in relation to GSAs or any GSA related decision, the obligation and the cost of any such appeal must be placed on schools or boards that wish to make applications to a court.
- Ensure that all schools have codes of conduct that are consistent with both the Alberta Bill of Rights and the Alberta Human Rights Act.
- We also recommend the development of respectful debate and respectful disagreement programs, to be delivered both as part of the regular school curricula and through the auspices of the Alberta Human Rights Commission and other agents of civil society.
2.0 Introduction

2.1 Background to Bills

In 1998, the Supreme Court of Canada ruled in the Vriend vs. Alberta decision that sexual orientation was to be read into Alberta’s human rights legislation as a prohibited ground for discrimination. The Court’s decision was a turning point in Alberta’s long road in trying to deal with sexual orientation both in its legislation and its public services.

For many years after the Court’s 1998 decision, the words “sexual orientation” were read into human rights legislation, but were not written into the Alberta Human Rights Act (AHRA). The situation changed in 2009 with the passage of Bill 44 — which also added section 11.1 into the AHRA to provide an “opt-out” mechanism for parents who were uncomfortable with their children being exposed to classroom discussions concerning religion, sexuality, and sexual orientation. The opt-out clause, which was established to assuage the fears of some in faith communities who were uncomfortable with these subjects, permitted parents to ask that their children be removed from such discussions, and it compelled schools to comply with parents’ requests.

Bill 44 and section 11.1 became emblematic of the struggles posed when rights are perceived (rightly or wrongly) to be juxtaposed with one another. How Alberta deals with the perceived conflict of these rights is an issue that has never been fully settled; and this set the stage for the legislative struggles encountered when the Alberta legislature attempted to satisfactorily address Gay-Straight Alliances (GSAs) in Alberta schools. That struggle culminated in November and December of 2014 with Bill 202, Safe and Inclusive Schools Statutes Amendment Act, 2014, and Bill 10, An Act to Amend the Alberta Bill of Rights to Protect our Children.  

Before Bills 10 and 202 were introduced, MLA Kent Hehr tabled Private Member Motion 503 during the 2014 Spring Session of the Alberta legislature. The private member’s bill would have made it mandatory for Alberta schools to allow the formation of GSAs when students requested GSAs. Motion 503 was voted down, with 19 Liberal, NDP, and Progressive Conservative MLAs supporting the Motion and 31 members opposed to the Motion.

On November 20, 2014, MLA Laurie Blakeman introduced Private Member’s Bill 202 (Safe and Inclusive Schools Statutes Amendment Act, 2014). Like Motion 503 before it, Bill 202 would have made the formation of GSAs mandatory in Alberta schools when a student requested permission to establish a GSA club. It would have also made the Charter of Rights and Freedoms

2 http://www.assembly.ab.ca/ISYS/LADDAR_files%20docs%20Chousererecords%20%28Legislation_28%29/session_2%20C20140303_1200_01_mo.pdf
a guiding document for Alberta Education. Bill 202 was withdrawn on December 3, 2014, two days after MLA Sandra Jansen introduced Government Bill 10.

Bill 10 was introduced as an alternative bill to deal with GSAs. Bill 10 did not make the Charter of Rights and Freedoms a guiding document for Alberta Education. Bill 10 did, however, grant authority to school administrators opposed to GSAs in their schools to disapprove and deny their formation. Bill 10 allowed that students may appeal a negative decision of the school board directly to the school board in accordance with s. 42 of the Education Act.

The passionate debates surrounding Bills 202 and 10, and the subsequent amendment of Bill 10, illustrated the collision of fundamental civil liberties and Albertans’ concern about these issues. Central to arguments for and against the bills were fundamental freedoms described in section 2 of the Canadian Charter of Rights and Freedoms, such as freedom of expression, association, assembly, religion and conscience; section 7 describing safety and security rights; and section 15 describing equality rights. In the passionate debates that ensued in the Legislature and across the province, Albertans with strong beliefs argued that their rights ought not be denied, effectively giving their rights greater weight or importance than those of others; and the solution that was to be found in balancing these rights remained elusive. On December 4, 2014, before the debate subsided and any decision on balancing rights was made, Premier Prentice suspended further debate on the matter of GSAs. By the time the legislative session ended a week later, Bill 10 had not yet received Third Reading.

2.2 RMCLA Decision to Hold Public Consultations

When Premier Prentice suspended further debate on Bill 10 before its third reading, he also promised to listen to Albertans about the proposed legislation and hear people’s thoughts on the issue.

RMCLA took the initiative to call for public consultations on the bill, and the Board of Directors directed that RMCLA conduct public hearings on GSAs and solicit feedback from the entire Alberta population, and submit the findings to the Government of Alberta.

2.3 Purpose of Public Consultation and Hearings

The purpose of the RMCLA public consultations was to draw a broad spectrum of views, research, and other evidence regarding all aspects of gay-straight alliances, and then to consolidate the information into a report with recommendations about possible legislation. This report summarizes the outcome of RMCLA’s public consultations on Gay-Straight Alliances in Alberta, and it is presented for review by all interested parties, Alberta MLAs and the public.
RMCLA’s public consultation process was established to elicit Albertans’ views on the issue including whether Albertans think there is a need for new legislation and, if so, what are the issues (including conflicts of rights and liberties) that need to be addressed and how should the government of Alberta best address them in legislation. RMCLA’s public consultation examined Bill 202 and Bill 10 in this context; and this report consolidates Albertans’ views about fundamental principles and directions for decision-making and recommendations for dealing with GSAs from a public policy and legislative perspective.
3.0 The Consultation Process

3.1 Method of Consultation

The RMCLA public consultations were established to attract the broadest possible input from Albertans on the topic of gay-straight alliances (GSAs). Two public hearing were held, one in Calgary on January 27, 2015 and another in Edmonton on January 29, 2015.

Notice of and invitations to participate in the impending public hearings were publicized on the RMCLA website and distributed through email and various social media. The invitation was distributed widely and directed to school boards, school board associations, home schooling associations, gay-straight alliance associations and clubs, separate school districts, religious leaders, health groups, experts associated with public education and GSAs, and legal experts.

The advertisements and invitations sought oral presentations at the hearings and/or written submissions to RMCLA. All members of the public were welcome to submit their views and to attend the hearings.

RMCLA understands that the issue of GSAs might attract support from only GSA supporters. To offset this, specific and concerted attempts were made to seek opinion from political and religious spectrums that could be expected to be less welcoming to the formation of GSAs in schools, or who would be more likely to seek restrictions upon GSAs.

Multiple invitations were directed to specific groups and individuals, such as the Catholic Archbishop of Edmonton, inviting them to speak at the hearings or provide written submissions. Despite repeated entreaties, no submissions were made and no presenters came forward. For example, the Archbishop’s office rejected offers on three different occasions. Consequently, panellists were asked to search for dissenting points of view and countering opinions to those affirming GSAs. Publications by high-profile leaders against GSAs or parts of GSAs were included in the review for this report. In addition, responses to the RMCLA poll included a large volume of qualitative commentary rejecting GSAs completely or seeking restrictions on their formation or operation.

RMCLA’s public consultations on GSAs generated wide interest and elicited responses from a broad cross-section of Albertans. The consultations were presided over by 5 panellists in Calgary and 4 in Edmonton. Two panellists sat on the both the Edmonton and Calgary panels. There were 19 presenters in Calgary and 18 in Edmonton, with 110 community members registered to attend the Calgary hearing and 70 registered to attend the Edmonton hearing. Other individuals sat in on the hearings.
To expand the reach further, a poll on GSAs and GSA legislation was also created. The questions in the poll were developed to elicit Albertans’ views and qualitative comments about each major aspect of Bill 202 and Bill 10. A process similar to that employed for the hearings sought respondents for the poll. In addition, paid advertisements on various social media were used to invite people to complete the poll. The poll was entirely voluntary.

The opinion poll attracted 2,838 respondents, and 628 of these gave additional qualitative comments on GSAs, both for and against. A randomly selected data set of complete poll responses was selected from among all responses and matched to demographic characteristics reflective of the Alberta population based on age, gender, religion, political affiliation, and type of school support. This resulted in a final matched data set used for analyses that included 1,355 Albertans. RMCLA is confident it is accurate within ± 2.6%, 95 times out of 100.

The review also examined various documents and commentary including: Bills 10 and 202, the Alberta Human Rights Act, the Alberta Bill of Rights, the Alberta Education Act, the Alberta School Act, the Canadian Constitution, Charter of Rights and Freedoms, and the Alberta Act; Alberta Education guides and Alberta Teacher Association guides; pastoral letters from the Catholic Archbishop of Edmonton, the Catholic Bishop of Calgary, and the Catholic Bishop of St. Paul, as well as public, separate, home, and private school commentaries and documents on the subject.

Panellists were invited to examine and research any additional documents that they wished to bring into their review of the subject.

At each hearing, the chairperson summarized ground rules and the process for the hearings, and then each presenter had 15 minutes to address the panel in the presence of the audience. The panellists were then invited to ask clarifying questions of each presenter.

Following the two public hearings, each panellist was requested to provide RMCLA’s Standing Policy Committee on Human Rights with a summary of the themes, research, and findings resulting from the submissions at the public hearing and their own reviews. The Policy Committee then reviewed each submission and amalgamated the common themes and recommendations into this document. In many cases, where the panel members and the committee seemed to be in agreement, panellists’ summaries of the concepts are directly written into this report.
3.2 Fundamental decision-making principles in the consultations

The panellists made decisions to include (or exclude) concepts or summarize evidence from a specific perspective. The broad principles used to filter reviews, commentary, submissions and summaries are stated below and acted as a basis for making recommendations for new legislation.

3.2.1 Respect for the dignity of all

Common to the vast majority of submissions and a universal theme identified by panellists was a fundamental respect for the dignity and worth of all persons. Indeed, that was repeatedly identified as the foundational principle for establishing GSAs in schools. There was little disagreement that Alberta’s educational system needs to embed this principle in all that it does. This principle was also apparent throughout the poll results from public, separate, and private school supporters, as evidenced by statements such as those of Tony Sykora, President, Alberta Catholic School Trustee Association, that “…all people, regardless of sexual orientation, are unique creations of God, and as such, all people share the same rights and dignity. Our faith affirms this truth and condemns any treatment that violates it.”

3.2.2 Safety and Security of the person

Flowing from respect for the dignity and worth of all persons was the respect for the safety and security of all persons. Panellists, presenters and poll respondents were unequivocal that dignity cannot be upheld without the assurance that safety and security of the person can be guaranteed. Panellists noted this as the second fundamental universal principle concerning GSAs in schools. Indeed, this principle in particular is central to the notion that schools have a duty to protect children from harm.

3.2.3 Fundamental freedoms

The panellists noted that a constitutional protection of civil liberties and fundamental freedoms applies equally to children, and not only to adults. The freedoms noted as particularly relevant to GSAs are equality in freedom of expression, association, assembly, religion and conscience.

Panellists noted that GSAs are typically established for students who are capable of voluntarily deciding to establish or join such a club, and not generally for children who lack sufficient maturity to make independent decisions about important and potentially life-altering matters. This concept is particularly relevant for students associated with GSAs, and will be discussed in greater detail later in this report.

4 http://www.acsta.ab.ca/news/2014/12/12/message-acsta-president-bill10
3.2.4 Limitation of rights and liberties

Some presenters observed that all individual rights have limitations. Panellists acknowledged the validity of that observation, and noted that the bar for limiting freedoms is and must be high. Indeed, there must be clear, proportionate and justifiable reasons for the limitation and assurance that the limitations do not cause harm to the individual.

3.2.5 Minimal intrusiveness

The final principle supporting the recommendations for GSA-related legislation was minimal intrusiveness in law making as it relates to people’s day-to-day lives.
4.0 Facts about Gay-Straight Alliances

4.1 What is a GSA?

4.1.1 What are the Hallmarks of GSAs?

Before proceeding with any discussion about legislation concerning Gay-Straight Alliances one must first identify the defining characteristics of a GSA. The RMCLA public consultations yielded many submissions that included definitions of GSAs. Amongst those, the following eight common hallmarks were articulated:

1. **A school club.** A GSA is an assembly of students as a school club; and
2. **Open to all.** Membership in the club is open to all students within a school; and
3. **Voluntary participation.** Members of the club all participate voluntarily: no one is compelled to attend, and all students have the option not to attend; and
4. **Free association.** The club allows free association among students for friendship, camaraderie and/or support; and
5. **Free expression.** Within the clubs, the students may freely and safely express themselves. GSA participants are not limited or required to discuss issues relating to any particular topic, including sexuality and gender identity; they may discuss (or not discuss) any topic they choose; and
6. **A safe place.** The club is intended to be a safe and secure place for students to meet within schools; and
7. **Avoidance of harm.** GSA clubs allow students to have a place to avoid interpersonal harms, such as harassment, bullying, or other forms of abusive behaviour that occur within schools; and
8. **Oriented for LGBTQ5 students and their allies/friends.** GSA clubs are particularly oriented to assist students who perceive themselves to be disenfranchised in some manner, or who identify with some sort of diverse sexual orientation or gender identity, and their allies within schools to receive support and promote a feeling of equality with one another.

4.1.2 What is the mandate of GSAs

The public consultation process revealed themes concerning the mandate of GSAs and what they are established to accomplish.

5 LGBTQ is meant as one of the broadest forms of acronym for lesbian, gay, bisexual, transsexual, two-spirited, queer-identifying and so on. The list of gender identities and expressions and sexual orientations is broader but, for the purpose of this report, this acronym will be used in this report to denote all sexual and gender diversities.
• **To encourage safety within schools.** Central to the mandate of a GSA is the focus on creating, holding and maintaining a safe place within a school for gay and lesbian students, students who self-identify as a having a diverse gender identity or sexual orientation, and others who might wish to demonstrate support or friendship toward these students.

• **To encourage dignity for all within schools.** GSAs are places where the value, dignity and worth of all individuals is respected and all students are welcome, and where this can be encouraged in a variety of ways that fit the composition of the group (i.e. education, advocacy, and support).

• **To provide social support relevant to LGBTQ students.** GSAs are places for students to provide peer support to help students understand and cope with the complexities of being part of a minority group. For others who join GSAs, it can be a place to gain a better and more compassionate understanding of their fellow students.

Participants in the RMCLA public consultations noted repeatedly that a GSA is often the only safe place in a student’s life. Indeed, for many LGBTQ students, their school’s GSA is their only safe haven from the bullying, abuse, humiliation and intolerance they commonly experience in their daily life outside the club — whether in school, in society and even within their own families. Participants noted the importance that GSA mandates show acceptance of all within a school.

4.1.3  **How are GSAs different from other clubs?**

Albertans who offered comments during RMCLA’s public consultation stressed that a GSA is a student club and as such is not different from any other friendship club where voluntary participation, free expression, and association with fellow students occurred. The differentiating factor is that some members of GSAs offer open and unrestrained acceptance of students who self-identify as “gay, lesbian, or with a diverse gender identity.” Many noted that GSAs differ from a general diversity club that can be created to include mandates to minimize bullying, but might not openly accept “gay” or “lesbian” identified students.

4.1.4  **What they GSAs not?**

The RMCLA consultations also heard what GSAs are not. Students, support staff, and teachers who help organize GSAs were very clear that a GSA does not resemble the misinformed and often misleading characterization of GSA clubs as dating clubs, sexual education classes, or places to recruit or inculcate people to become “gay” or “lesbian”. In fact, no evidence was presented or available from any source to indicate that GSA clubs engage in any such activities.

Presenters and research made it abundantly clear that GSAs in schools do not segregate students. They are open and inclusive of anyone who wishes to join and participate. Similarly,
GSAs are not — nor are they designed or intended to be — exclusive to LGBTQ students and, rather than diminish it, in fact GSAs promote and increase inclusion at school.

Submissions and research did not assert that any other student clubs (arts, hobbies, sports) are discriminatory or segregating. On the contrary, participants remarked that suggesting GSAs be segregated (i.e., allowed, but only off campus) is itself discriminatory.

4.2 What is the basis for GSAs?

4.2.1 The need for GSAs
RMCLA’s public consultation process was established to elicit Albertans’ views on the issues surrounding Gay-Straight Alliances and whether there is a need for new legislation; and, if so; then what are the issues (including conflicts of rights and liberties) that ought to be considered, and how should the government of Alberta best address the issues in legislation. RMCLA’s public consultation examined Bills 202 and 10 in this context; and this report articulates Albertans’ views about fundamental principles and directions for decision-making and recommendations for dealing with GSAs from a public policy and legislative perspective.

The public hearings and submissions revealed that various forms of alarming behaviours take place in Alberta schools. Collectively the conduct was most often described as bullying, but it is important to note the full range of behaviours that were described in schools between students and between students and school employees. The following is not intended to point to any one school, person, or employee of any school; rather, the purpose is to convey the personal accounts given by consultation participants who described specific abusive incidents and behaviours have occurred and are occurring in Alberta schools.

The most alarming descriptions regarding why GSAs are needed in Alberta schools were depictions by some Alberta students of physical abuse and beatings in schools, especially directed toward LGBTQ students. Various forms of emotional and psychological abuse were also described and include name calling, widespread use of slurs, isolating behaviours, shunning, and exclusion from school events. The consequences on students’ self-esteem was noted as devastating in some cases leading to thoughts of suicide, attempts of suicide and, in some cases, students indicating peers had died by suicide. Other effects were described such as homelessness and heavy drug and alcohol abuse. Greater detail will be given in subsequent sections.

These harms were noted to occur in public, separate, and private schools, in urban and rural environments. Consultation participated indicated that often rural school locations had few resources to deal with these harms. In some cases, presenters noted, schools were not willing to consider the possibility of such harms occurring within their schools, or to address the need for GSAs even when students requested that GSAs be formed. Consultation participants also
noted that the denial by school officials of harmful behaviour condones and reinforces the abuses taking place within Alberta schools.

4.2.2 Effects of GSAs

Submissions included research and first-hand accounts from Alberta students that GSAs are an effective means of combatting the safety risks faced by LGBTQ students. Evidence was presented that noted tangible benefits to those within a GSA (i.e. a reduction of suicidal ideation after becoming involved in a GSA was described by more than one presenter), as well as benefits to boys and girls not in the club but within schools that had a GSA.

GSAs provide more than a haven free from physical, psychological and emotional abuse: GSAs provide a supportive environment and shift the culture in a way that serves to socially integrates students within a school environment.

Research is new in the area, but evidence has emerged about the positive effects and outcomes of GSAs, and demonstrating that all students in a school benefit from the presence of a GSA. Most significantly, the benefits appear to be greater in schools with GSAs than comparable schools with “general policies” of anti-discrimination.

Many speakers cited scholarly studies showing that GSAs are proven success stories that contribute to whole-school wellness that, in turn, has positive implications for the broader community. Speakers referred to one recent study in particular, a 2014 University of British Columbia (UBC) study6 that explored the relationships between GSAs and school-based anti-homophobia policies and their ability to reduce the harmful effects of homophobic discrimination on school-aged youth. The UBC study showed that:

- GSAs are more consistently effective than anti-homophobia policies in reducing the harmful effects of homophobic discrimination.
- GSAs in schools are “associated with lower odds of sexual orientation discrimination for both LGB boys and girls, and mostly heterosexual girls” (p. 97);
- “GSAs were only linked to reduced odds of suicidal ideation for mostly heterosexual girls... anti-homophobic bullying policies were associated with lower odds of discrimination for mostly heterosexual girls, suicidal ideation for exclusively heterosexual girls, and suicide attempts for LGB boys and girls” (pp.97-98);

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“Students in schools with longer-established GSAs (i.e., more than 3 years since implementation) had significantly reduced odds of all the outcome measures (i.e., homophobic discrimination, suicidal ideation, suicide attempts) for LGB boys and girls, except for suicide attempts among boys” (p. 98);

“For mostly heterosexual students, a GSA that had been in place for 3 or more years was linked to significantly lower odds of sexual orientation discrimination for both boys and girls, but only lower odds of suicidal ideation for mostly heterosexual girls” (p.98);

“The presence of longer-term anti-homophobic bullying policies was also associated with lower odds of suicidal ideation and suicide attempts for gay and bisexual boys, and lower probability of suicide attempts for lesbian and bisexual girls, but not discrimination” (p.98);

“Schools with a longer history of GSA[s] or an explicit homophobia-related anti-bullying policy were also significantly linked to lower odds of suicidality among exclusively heterosexual adolescent boys, but not girls” (p.99).

According to the Alberta Teachers Association, “Contemporary research indicates that students who feel unsafe in their school are less likely to learn, whereas students who perceive their schools as accepting, safe and welcoming spaces not only improve their grades and attendance but also feel more hopeful about their academic and personal future. Lesbian, gay, bisexual, trans-identified and queer (LGBTQ) students often face discrimination and prejudice in their schools. As a result of this marginalization, many LGBTQ students experience higher rates of suicide, drug and alcohol use, smoking, and feelings of isolation and despair.”

It appears GSAs have an effect for the overall feeling of safety in a school for all students, including heterosexual-identified students. The presence of a GSA in a school also has the potential to be beneficial for the sexual and gender diverse adults who work in schools in various capacities.
4.3 What are the fears about GSAs?

The RMCLA public consultation yielded a great many comments, some of which expressed apprehension about deleterious effects that might occur if GSAs are allowed in schools. A few people suggested that a GSA would be harmful to religious, parental and/or separate school board rights.

The worry expressed by a small minority of participants, and the accommodation of people who harbour such concerns, emerged as the basis for discussing the need to “balance rights.” If this type of discourse is to have credible validity, it is essential to identify under what scenarios and contexts such a balancing of rights would need to occur. This will be dealt with in the findings below.

Another fear expressed by some participants in the public consultations was that identifying “gay” students in a club could isolate and marginalize these students, some of whom might already be experiencing abuse. The participants indicated that this fear is based on the idea that sexual orientation and gender identity is only one part of a person’s identity, and that it should not be isolated from other aspects of the person’s identity. If this is true, then it is vital to distinguish how a student’s identity can be addressed while also ensuring the student’s safety. This too will be addressed below.
5.0 Findings

5.1 Is there a need for legislation?
All panellists noted a need for legislation regarding GSAs. However, there was not consistent support for the passage of either Bills 202 or Bill 10 without further changes. Panelists’ views were consistent with the overwhelming majority of commentary in the poll and from people making submissions during the public consultation process.

The rationale for legislation was universally stated as being directly related to the seriousness of the issues facing LGBTQ youth both in and outside schools and the issues that underline the need for GSAs (see section 4.2). Presenters pointed out to panellists on a variety of occasions that some schools continue to demonstrate willingness to discriminate against students of various sexual orientations and gender identities, or to deny that any problems exist, even in the face of abuse and violence described in the previous section.

A very few people asserted that there is no need for legislation concerning GSAs. This was clearly a minority position and often presented without reference to the gravity of problems associated with the need for GSAs, how to address the problems faced by LGBTQ youth or the vulnerability of LGBTQ students as a marginalized community.

In the absence of direction from the Alberta Government, there was no evidence or indication that abusive acts within schools would stop, or that all schools would recognize the need to stop such abuse. Consequently, appropriate and entirely new or wholly revised legislation is required to support the best interests of children across Alberta.

5.2 What is the basis for suggested legislation?
Given that the panellists and the vast majority of submissions suggest that legislation regarding GSAs is required then, based on the evidence provided to the panel, the following is put forward as the foundation for any proposed legislation to address Gay-Straight Alliances in Alberta schools.

5.2.1 Duty to protect and a safe place within a school
The public consultation received considerable evidence that ongoing abuse exists within Alberta schools, particularly directed toward LGBTQ students, and there appears to be a real, active, and proximal duty to protect students from this harm. The panellists were persuaded that LGBTQ minors are a particularly vulnerable group.

The State, in this case the Province of Alberta, is noted to have a special obligation to protect the welfare of minors from harm when parents, families, or the community cannot or does not.
In particular, the preamble to the *Education Act* stipulates “students are entitled to welcoming, caring, respectful and safe learning environments that respect diversity and nurture a sense of belonging and a positive sense of self.”

Within a school setting school authorities bear the responsibility to protect children from abuse. This responsibility exists where a student is in danger — even if doing so interferes with the family unit or any rights claimed by the student’s parent or parents. The welfare of minors and the avoidance of harm must be the paramount consideration when competing rights related to these issues are to be balanced.

Alberta’s *Child Youth and Family Enhancement Act* describes various scenarios when minors are in need of protection from families. These include physical abuse, emotional abuse, potential for suicide, and other scenarios, many related directly to circumstances enumerated in the *Child Youth and Family Enhancement Act* (see section 2 and 3 in particular). These sections of the legislation are worth repeating here. Items underlined in the quote of that Act relate to scenarios described by submissions to RMCLA’s public consultations.

2) For the purposes of this Act, a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following:

(a) the child has been abandoned or lost;

(b) the guardian of the child is dead and the child has no other guardian;

(c) the child is neglected by the guardian;

(d) the child has been or there is substantial risk that the child will be physically injured or sexually abused by the guardian of the child;

(e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse; the child has been emotionally injured by the guardian of the child;

(g) the guardian of the child is unable or unwilling to protect the child from emotional injury;

(h) the guardian of the child has subjected the child to or is unable or unwilling to protect the child from cruel and unusual treatment or punishment.

3) For the purposes of this Act, a child is emotionally injured

(a) if there is impairment of the child’s mental or emotional functioning or development,

(i) if there are reasonable and probable grounds to believe that the emotional injury is the result of

(A) rejection,

(A.1) emotional, social, cognitive or physiological neglect,

(B) deprivation of affection or cognitive stimulation,

8 http://www.canlii.org/en/ab/laws/stat/ia-2012-c-e-0.3/latest/ia-2012-c-e-0.3.html(as yet unproclaimed) See also s. 45(8) of the School Act, c. S-3 RSA 2000.

9 Child Youth and Family Enhancement Act, RSA 2000, c-12
(C) exposure to domestic violence or severe domestic disharmony,
(D) inappropriate criticism, threats, humiliation, accusations or expectations of
or toward the child, mental or emotional condition of the guardian of the child
or of anyone living in the same residence as the child;
(F) chronic alcohol or drug abuse by the guardian or by anyone living in the
same residence as the child;
(b) a child is physically injured if there is substantial and observable injury to any part of
the child’s body as a result of the non-accidental application of force or an agent to the child’s body
that is evidenced by a laceration, a contusion, an abrasion, a scar, a fracture or other bony injury,
a dislocation, a sprain, hemorrhaging, the rupture of viscus, a burn, a scald, frostbite, the loss or
alteration of consciousness or physiological functioning or the loss of hair or teeth; 10

RMCLA’s public consultations heard evidence from students that many of the above behaviours
and scenarios are occurring within Alberta homes and schools, including at the hand of fellow
students and school staff.

Descriptions of these school scenarios were commonly characterized as bullying. Upon
examining incidents in greater detail, however, these “bullying” incidents included physical
beatings (pushing, hitting, punching and/or kicking) by fellow students; inappropriate criticism;
humiliation and threats; and rejection. Students also described school administrators who are
unwilling to protect children from emotional injury, and who simply deny that any such
problems occur within their schools.

Students clearly linked these repeated incidents and assaults to consequences including self-
harm, addictions, homelessness, drug abuse, anti-social behaviour, suicide ideation, suicide
attempts, and some identified actual suicides — among both LGBTQ and non-LGBTQ students
in schools.

The behaviours and scenarios described during the consultations as occurring within schools
suggest that many Alberta minors are in need of protection within their school environment,
and that means must be found to address the environment in those schools.

Principles from a variety of other legislation concerning minors and children note that adults —
including parents, teachers, and any professionals working with children — have a special
responsibility to protect children. This obligation would include administrators and educators in
public, separate, private and any other school.

RMCLA therefore suggests that the government has a duty to act in the best interests of
protecting the well-being of minors as a paramount principle — even if that extends to
removing children from the school or home, or providing medical treatment or other
interventions against parental wishes, because it is in the manifest best interests of the child.

Where conflicts of rights exist, the best interest of the child prevails

The panelists received multiple submissions noting that, where the protection of minors is concerned, the minors’ interests must prevail over the wishes or interests of adults. While parents are free to engage in various practices, including religious practices, in certain cases the best interests of the child may be invoked to protect a child from those very practices. Even in such cases, however, the parent is still free to exercise their own religious rights or freedoms.

While religious and other parental rights are recognized, the courts and legislatures can and have imposed conditions on the exercise of those rights where warranted by the interests of the child. In Young v Young\(^\text{11}\) the Supreme Court of Canada stated:

\[\text{The power of the custodial parent is not a "right" with independent value granted by courts for the benefit of the parent. Rather, the child has a right to a parent who will look after his or her best interests and the custodial parent have a duty to ensure, protect and promote the child's best interests.}\]

\[\text{The legislative provision for the "best interests of the child" does not limit and therefore does not violate the Charter right to religious and expressive freedom. Religious expression not in the best interests of the child is not protected by the Charter because the guarantee of freedom of religion is not absolute and does not extend to religious activity which harms or interferes with the parallel rights of other people. Conduct not in the best interests of the child, even absent the risk of harm, amounts to an "injury" or intrusion on the rights of others and is clearly not protected by this Charter guarantee. "Injure" in this context is a broad concept. To deprive a child of what a court has found to be in his or her best interests is to "injure", in the sense of not doing what is best for the child. A child's vulnerability heightens the need for protection and any error should be made in favour of the child's best interests and not in favour of the exercise of the alleged parental right. An additional factor which may come into play in the case of older children is the "parallel right" of others to hold and manifest beliefs and opinions of their own.}\]

In the United Kingdom’s jurisprudence, and the case of Re K.D. (Minor) (Ward: Termination of Access), [1988] A.C. 806, (which, while not determinative of the law in Canada, can be considered) Lord Oliver considered that jurisdiction’s approach to parental rights in the context of the European Human Rights Convention:

\[\text{The word “right” is used in a variety of different senses, both popular and jurisprudential. It may be used as importing positive duty in some other individual}\]

\(^{11}\) [1993] 4 SCR 3, 1993 CanLII 34 (SCC)
for the non-performance of which the law will provide an appropriate remedy, as in the case of a right to the performance of a contract. It may signify merely a privilege conferring no corresponding duty on anyone save that of non-interference, such as the right to walk on the public highway. It may signify no more than the hope of or aspiration to a social order that will permit the exercise of that which is perceived as an essential liberty, such as, for instance, the so-called “right to work” or a “right” of personal privacy.

Parenthood, in most civilised societies, is generally conceived of as conferring on parents the exclusive privilege of ordering, within the family, the upbringing of children of tender age, with all that that entails. That is a privilege that, if interfered with without authority, would be protected by the courts, but it is a privilege circumscribed by many limitations imposed both by the general law and, where the circumstances demand, by the courts or by the authorities on whom the legislature has imposed the duty of supervising the welfare of children and young persons. When the jurisdiction of the court is invoked for the protection of the child the parental privileges do not terminate. They do, however, become immediately subservient to the paramount consideration that the court has always in mind, that is to say the welfare of the child.

As set out in the Young case, the notions of ‘parental right’ and parental duty must be viewed from the perspective that the parent is acting on behalf of a minor child to exercise the right of the child. Accordingly, in determining the religious upbringing of the child, a parent exercises — on behalf of the child — the child’s right to have a religious education. Similarly, a parent exercises a child’s right to seek medical treatment and to give (or withhold) informed consent to that treatment. In more banal circumstances, a parent exercises a child’s rights in choosing to learn to play, or to not play, a musical instrument or engage in a sport, or exercises the child’s associative rights in deciding whether a child will ‘hang out’ with a particular group of friends. In each of these cases the parent stands in the shoes of the minor to make decisions on the minor’s behalf and in the child’s best interests. Indeed, if parental rights exist at all, they are not merely authoritarian rights, but rather decision-making and parental action is to always be exercised within the overarching context that the parent is obliged to act in the child’s best interest. Thus, when a parent fails in meeting that obligation, the state may intervene to protect the child.

5.2.3 Constitutional considerations

Canadian constitutional law is very clear: everyone has the right to live without discrimination; everyone has fundamental freedoms as outlined in the Charter; and everyone has the right to
exercise those freedoms unless they cause harm to another. It is the responsibility of the state to intervene when rights intersect and one or more parties claim harm.

Section 15 of the Canadian Charter of Rights and Freedoms\(^\text{12}\) guarantees "the equal protection and equal benefit of the law without discrimination". The Supreme Court of Canada has included sexual orientation among these grounds of discrimination.

Section 2 of the Canadian Charter of Rights and Freedoms guarantees freedom of conscience, freedom of expression, freedom of religion and freedom of association.

Section 7 of the Canadian Charter of Rights and Freedoms guarantees the “right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

In addition, Section 4 of the Alberta Human Rights Act (AHRA)\(^\text{13}\) states that:

No person shall deny to any person or any class of persons any [...] services, accommodation, or facilities that are customarily available to the public or [...] discriminate against any person or class or persons with respect to any [...] services, accommodations, or facilities.

These laws serve to limit our legislature to the creation of laws that will comply with these enshrined Canadian values. In relation to schools, we must also look at constitutional rights granted to denominational, separate and dissentient schools, as set out in s. 93 of the Constitution Act, 1867 and the Alberta Act.\(^\text{14}\)

A number of Supreme Court of Canada decisions address balancing rights when they conflict and limiting rights further to s. 1 of the Charter. When balancing competing rights, the courts will ask whether upholding the rights of one party will have a disproportionately negative impact on the rights of another (for example, see section 5.2.2). There must be real and justifiable reasons to restrict any person’s rights (for more detail see section 5.2.8.5).\(^\text{15}\)
5.2.4 The mature minor doctrine

The mature minor doctrine underscores the importance of self-determination and choice in a young person’s life. The Supreme Court of Canada has determined that, as children mature, their capacity for making decisions on their own increase, and the influence of their parents decrease. The Court noted that,

> The purpose of the Child and Family Services Act is to defend the “best interest” of children who are “in need of protection” — this means, in this context, children who do not have the capacity to make their own decisions about medical treatment. When applied to young persons who possess the requisite capacity, the presumption has “no real relation” to the legislative goal of protecting children who do not possess such capacity. The deprivation in the case of mature minors is thus arbitrary and violates section 7 of the Canadian Charter of Rights and Freedoms.

The ‘mature minors doctrine’ enables and affords legal protection for the rights of persons under the age of majority to make (sometimes significant) medical and life choices, including the undertaking of practices and behaviours — such as pre-marital sex and the use of contraception — that are contrary to some religious teachings and can have serious and life-altering consequences.

5.2.5 Acknowledging self-determination and freedom of association

The Child, Youth, and Family Enhancement Act includes (at s.2) the provision that, when “a child is in need of intervention, a Court, an Appeal Panel and all persons who exercise any authority or make any decision under this Act relating to the child must do so in the best interests of the child and must consider” [among other things]:

> 2(d) a child who is capable of forming an opinion is entitled to an opportunity to express that opinion on matters affecting the child, and the child’s opinion should be considered by those making decisions that affect the child.

It is clear that in scenarios such as those suggested by s. 2, a child’s opinion in relation to her or his interests must be considered. It is just as appropriate that a student’s opinion in relation to the formation of, or participation in, GSAs should be considered.

GSAs are voluntary clubs that exist typically in secondary schools. Legislation allowing GSAs in any school based on student requests would acknowledge students’ right to associative and

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17 Child Youth and Family Enhancement Act, RSA 2000, c-12
expressive liberty and self-determination. Given the entirely voluntary nature of the club, a GSA does not infringe on any students who wish not to be involved in this same club. However, not allowing GSAs in schools does diminish the fundamental liberties of LGBTQ students.

In January 2015, the Supreme Court of Canada reiterated that freedom of association is "essential to the development and maintenance of the vibrant civil society upon which our democracy rests".18 The purpose of freedom of association is "to recognize the profoundly social nature of human endeavours and to protect the individual from state-enforced isolation in the pursuit of his or her ends". The associative freedom includes collective activity that enables those who would otherwise be vulnerable and ineffective to meet on terms that are more equal with the power and strength of those with whom their interests interact and, perhaps, conflict. The guarantee of freedom of association empowers vulnerable individuals to form supportive groups and helps them work to right imbalances in society.

The School Act (and the Education Act) give students rights to be involved in certain decisions at age 16. In addition, Bill 10’s amendment providing that children could appeal the decision of a school board was a tacit acknowledgement by our government that minors, especially mature minors, have a role in determining their treatment and their future. Nevertheless, minors might not yet have the resources to enable their decisions to be put into action. As noted in the section 5.2.5, the Child, Youth, and Family Enhancement Act also notes the importance of mature minors being involved in decisions affecting their lives.

GSA members are youths who have or are in the process of developing the capacity to make informed decisions about when, where and with whom they wish to associate. The absence of legislation permitting or mandating GSAs means that many students who would otherwise form GSAs will be denied their associative rights to seek the support of a group and will have to face, alone, the oppressive climate that, according to various participants in the public consultations, is an everyday occurrence in Alberta schools. Legislation mandating the formation of GSAs when they are requested would permit the exercise of the students' Charter right to freedom of association.

The law enables mature minors to be involved in decision-making in a variety of respects. Some of those decisions may entail life-altering consequences; yet, in a variety of respects society and the government recognize that the minor should, at a certain stage, be involved in those decisions. Accordingly, we suggest that such recognition should also extend to the establishment of, or participation in, student clubs or societies.

18 Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1
5.2.6 Parental rights and GSAs

As has been noted throughout this report, one of the hallmarks of a GSA is that participation is entirely voluntary. No student is required to join or participate. The panel did not receive any evidence or submission that the formation of a GSA or the voluntary participation of students in a GSA would eliminate the possibility of any parent from involvement in their child’s life, or involvement in decision making with the child.

Parental rights are neither enjoined nor infringed by the presence of a GSA. Parents retain the same unencumbered scope to instruct their children in their values and beliefs, make informed choices as to their children’s education, support their children’s wish to participate in a GSA or instruct their children not to.

Freedom of religion and conscience encompasses the right of parents to educate their children in their own values and religious beliefs, and rear their children according to those values and beliefs.

Parents who do not wish their children to participate in a GSA have no right, individually or as a group, to impose that view upon parents who would like their children to participate in a GSA or indoctrinate other parents’ children by way of the school system or otherwise. Nor do they have a right to deny other children the opportunity to participate if those children’s parents support participation.

The responses to our public poll — from public, separate and private schools supporters — suggested that there is not unanimity of views regarding GSAs, although the clear majority of people in all types of schools supported GSAs. Consequently, the minority parent view to impede the formation of GSAs so that all students (even those with parents that support GSAs) cannot voluntarily join such a club would be the imposition of a few parental views upon the majority of others.

We did hear, in our public consultation, information about parents who are abusive or do not act in the best interest of their children. We are all aware that within our society, and in all sectors of our society, there are parents who abuse their children or who fail or are unable, for various reasons, to look after the best interests of their children or provide them with the support and comforts that the children need.

The government’s duty to protect minors from, amongst other things, abuse and neglect trumps parental authority. We see that principle enshrined in a number of our laws. Our consultative process heard descriptions of LGBTQ students experiencing parental abuse and rejection, and of others who do not receive support from their own parents. We heard that in such cases a GSA might be the only safe place in the student’s life. In these cases, especially where the mature minor doctrine applies, the student’s own decision-making abilities must be
recognized in determining whether the student should participate or not in a GSA. In cases such as these, respecting the student’s privacy and maintaining confidentiality of their choices regarding is also vital to the student’s safety and well-being.

Responses to our poll — from public, separate and private schools supporters — showed little support for entrenching parental rights within the Alberta Bill of Rights or elsewhere.

We also advise caution in light of the unintended consequences of proclaiming ‘parental rights’ in the Alberta Bill of Rights or other enactments. Albertans have seen, in the past and even today, where unencumbered ‘parental rights’ lead to horrific consequences for children. A review of the Leilani Muir case is one such example. Forced marriages of children, honour killing and the view of some on aggressive corporal punishment for misbehaviour are other examples at the extreme of the spectrum.

Beyond these examples, the law relating to parental authority is, arguably, already well established or settled. Unintended consequences are likely to flow from enshrining parental rights into the Bill of Rights by diminishing, or being interpreted or perceived to diminish, the importance of the underlying duty to protect minors or diminishing a parent’s responsibility to act in the best interest of the child through whom the ‘right’ flows to the parent. A great deal more study of such unintended and other consequences is required in various areas of law such as child welfare, family, adoption, health and mental health, criminal, agency, trusts, banking and many others. Paradoxically, including ‘parental rights’ in the Bill of Rights without a great deal of definition and without amendment to numerous other laws may point toward many of its limitations and actually erode in the public’s mind the sense of what parental rights ought to be.

There simply is neither strong evidence nor support for placing “parental rights” in the Alberta Bill of Rights or other legislation.

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19 Muir v. Alberta, 1996 CanLII 7287 (AB QB. Leilani Muir was unwanted and neglected by an abusive and alcoholic mother. “After unsuccesfully placing her into a convent school, her mother was finally able to place Leilani into the Provincial Training School for Mental Defectives in Red Deer, Alberta when she was eleven years of age. There is no indication that Leilani was ever formally diagnosed as being intellectually disabled, the school admitted her solely on the basis of information that her mother provided. It was also her mother who authorized the school to sterilize Leilani in compliance with the Sexual Sterilization Act of Alberta.It was her mother who put her into care and approved her sterilization.” (http://drvitelli.typepad.com/providentia/2007/06/the-leilani-mui.html)

20 “Parents and caregivers who force marriages often believe that their children’s lives are their responsibility and that therefore they have the right to decide who and when their children marry. They believe that they know what is best for their children.” Forcing marriages and even kidnapping continues to be viewed by some as simply a part of their parental right. http://www.fmp-acsa.ca/wp-content/uploads/2013/03/FMP_SPT_Intro_to_Forced-Marriage.pdf
5.2.7 Religious rights and core tenets concerning GSAs

Understandably, the strongest objections to the establishment of GSAs have come from those with strong religious beliefs. For example the Catholic Bishop of Calgary, Fredrick Henry, indicated in an open letter21 that he fears restrictions of the “…freedom to instruct one’s children consistent with the manner of one’s faith and citizens rights to manifest their beliefs by worship and practice in the absence of coercion or constraint by government.”

Some Albertans who submitted comments in our poll self-identified as holding a variety of religious beliefs and being both supportive and non-supportive of GSAs. Some Catholic respondents expressed views that clearly are divergent from those of the province’s Catholic Bishops. We heard similar divergent views in the public consultation. In one case, after concluding her presentation at the Edmonton public hearing a student presenter was asked by a panellist if the existence of a GSA in her Catholic school would make her feel, in any way, less Catholic. She responded by stating unequivocally, “no, it would make me feel more Catholic” and she went on to state that, in her view, having a GSA in her school would be entirely consistent with what she had been taught regarding what Jesus said about “loving your neighbour.”

While we did not have the benefit of hearing from the Archbishop or the Bishops during our public consultations, other Catholics have provided us with their view that canon law suggested that the Bishops have full say in what is and is not Catholic education, “full stop.” This was given as a rationale not to appear at our public consultations.

Calgary’s Bishop Henry has also noted that the Catholic catechism suggests that those with same sex attractions “must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided.” Others noted recent statements by Pope Francis that gay and lesbian people should not be judged, and the synod’s almost two-thirds agreement that gay and lesbian people have inherent gifts that should be respected.

A tenet of a religion is a belief (an article of faith) that the adherent considers to be self-evidently true, and not open to serious debate. In that respect, it is unlike a denominational position taken by a religious group on a secular policy issue – which the freedom of religion and conscience clause in the Charter is not designed to protect – even if the denominational policy position has underpinnings that link to a tenet of that religion.22 As the Supreme Court of Canada noted in *R. v Morgentaller*, in such cases choice of belief or opinion is not the same as a religious tenet,

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Individuals are afforded the right to choose their own religion and their own philosophy of life, the right to choose with whom they will associate and how they will express themselves, the right to choose where they will live and what occupation they will pursue. These are all examples of the basic theory underlying the Charter, namely that the state will respect choices made by individuals and, to the greatest extent possible, will avoid subordinating these choices to any one conception of the good life.

Our consultation also received a presentation from a Calgary Rabbi, who provided an interpretation of scripture that was inclusive of those who vary from a literal reading of scripture. He was also clear that, while he represented his congregation, there are those within his own community who would not agree with his interpretation.

What becomes clear is the obvious statement that religions are different from each other, and that there exists a variety of streams and views within each religion. The Charter protects the spiritual practice or belief of an individual that has spiritual significance for the individual, “subjectively connecting” him or her to the divine even though it is entirely personal, and not part of a more widely-held religious belief system or the beliefs of the leaders of the religion to which that individual indicates he or she belongs.23

The Supreme Court of Canada has also noted that, even then, religious belief is not absolute. The Court has discussed the intersection of conflicting or differing religious views:

The purpose of freedom of conscience and religion becomes clear. The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided inter alia only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own.24

Statements made by the Pope, Alberta’s Catholic Bishops, as well as opinions expressed by religious leaders and followers of other faiths are all strong evidence that a debate is alive and well in religion regarding the issues of our inquiry.

Not every effect of legislation on religious beliefs or practices is offensive to the constitutional guarantee under s.2(a). The section does not, therefore, require a legislature to refrain from imposing burdens regarding the standards of education, even in the context where religion is practiced in schooling.25

Nor was it established that the presence of GSAs in schools has any deleterious effects on the central tenets of any religion. Given its voluntary nature a GSA in a school also does not

23 Syndicat Northcrest v. Amselem, infra, footnote 36
24 R. v Morgentaler, [1988] 1 S.C.R.
25 (Jones v R [1986] 2 S.C.R. 284
diminish or interfere with other people’s choice to practice (or not to practice) any particular religion, even within the school. Consequently, we do not find that there is any conflict between mandating GSAs in schools and freedom of religion.

5.2.8 Separate school rights and the intersection with religious and parental rights

5.2.8.1 The privilege of denominational schools

The Constitution Act, 1867 and the Alberta Act, 1905 establish the educational rights or privileges relating to denominational, separate and dissentient schools in Canada. Those rights were extended to classes of persons who had those rights at the Union (1867) and, in Alberta, on the date of passage of the Alberta Act (1905). The classes of persons who received such rights, effectively, are Roman Catholics and Protestants. (For a summary of legislation relating to educational rights, see Appendix 8.1). The pre-confederation right or privilege they had with respect to denominational, separate and dissentient schools were continued post Confederation.

In Alberta, any right or privilege with respect to separate schools which any class of persons had prior to the Province joining Confederation were carried forward thereafter. Such schools are established as a matter of constitutional right — which includes the right to preserve the essential religious character of such schools to achieve this objective26. For the purpose of this report we will refer to denominational, separate and dissentient schools simply as ‘denominational’ schools.

Beyond such denominational schools, other religious schools have been permitted by Provincial governments, through legislation or through the School Act. Such schools include ‘Charter’ and ‘Private’ schools. The School Act also provides an option for home education or home schooling. These permitted forms of schooling do not operate under the rights granted denominational schools by the Constitution Act, 1867 and the Alberta Act, 1905 but rather operate as a matter of legislative permission or license and are therefore not included in any discussion of s. 93 of the Constitution Act, 1867 and s. 17 of the Alberta Act.

The rights or privileges protected by s. 93(1) of the Constitution Act, 1867 are immune from Charter review in the manner described in s. 29 of the Charter. In an earlier case, the view of the Supreme Court of Canada was that s. 29 was not required in order to achieve that result27— rather it was put there simply to emphasize that the special treatment guaranteed by the Constitution to denominational, separate or dissentient schools, even if it sits uncomfortably with the concept of equality embodied in the Charter. It was never intended that the Charter

27 Reference Re Full Funding for Roman Catholic Separate High Schools, 1987 1 SCR 1148.
could be used to invalidate other provisions of the Constitution, particularly a provision such as s. 93 which represented a fundamental part of the Confederation compromise.

While a constitutional ‘right’ to the establishment of denominational school boards, and to preserve the essential religious character of such schools does exist, the manner in which those Boards operate is not unfettered. No part of the Constitution is made, by virtue of s. 52 of the Canada Act, paramount over any other. Each provision that is part of the Constitution must be read in light of the other provisions, unless otherwise specified. So while s. 29 provides that the Charter cannot be used to invalidate denominational schools per se or deny them the right to teach denominational doctrine, or to dismiss teachers who do not comply with moral teachings of the school’s/board’s religious tenets, the legislature has the right to regulate other aspects of school operations and the Charter applies to the numerous and various laws, regulations, policies and activities which are involved in the establishment and operation of schools.

Courts have also on the extent to which the denominational rights may be used to limit activities within a school. For example, in In Hall v. Powers, a gay student in a Roman Catholic school wanted to take a date to prom. His school principal denied him permission to bring his boyfriend to the prom. The Superior Court of Ontario granted Hall an injunction restraining the defendants (the school/principal) from preventing his attendance with his boyfriend at the prom. The Court held that the defendant principal's decision was not justified under s. 93 [of the Constitution Act, 1867], both because the specific right in question was not in effect at the time of Union in 1867 and because, objectively viewed, it could not be said that the conduct in question in this case went to the essential denominational nature of the school.

5.2.8.2 Separate schools and their autonomy

While denominational schools have specified rights that exist under constitutional authority, all schools in Alberta are creations of the Legislature and are governed by statutes and regulations created under those statutes. School Boards and School Trustees have no authority but that which has been delegated to them through the Legislature. The legislature, however, must legislate in accordance with the rights conferred by the Constitution Act, 1867 and the Alberta Act.

As we see, the rights of denominational schools and their respective school boards are limited to those prescribed and are not absolute. All schools in Alberta are subject to the legal authority of the Legislature. The School Act, for example, both legislates respect for diversity

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28 Reference Re Full Funding for Roman Catholic Separate High Schools, 1987 1 SCR 1148.
29 Hall v. Powers [2005] OJ No 2739, 140 ACWS (3d) 654
and shared values and prohibits religious intolerance or persecution\textsuperscript{30}. The Act regulates virtually all aspects of permitted schooling within the province including, by way of example only, how all school Boards are formed and regulated, the qualifications that teachers must possess, attendance requirements, student discipline, and financial management of Boards (including how they receive funding and the conditions attached to such funding). Alberta Education and the variety of regulations made under the School Act control minute detail of school activities from curriculum to hours of instruction and safety. It cannot successfully be argued that School Boards have absolute autonomy to manage their affairs. In fact the reverse is true: apart from their constitutionally-prescribed rights, in all other respects they only have such autonomy as is granted to them by the Legislature from time to time.

Nor is the regulatory scheme static or stuck in the framework or models of 1905. The Supreme Court of Canada, following an analysis of s. 93 of the Constitution Act, 1867 and s. 17 of the Alberta Act as well as the history of school regulation in Alberta, found that

\textit{Alberta may alter educational institutions within its borders, subject only to those rights afforded through the combined effect of s. 93 and s. 17. Moreover, no constitutional convention demonstrates reasonable autonomy. The historical evidence indicates that significant centralized control existed when Alberta joined Confederation and the grant to the provinces of plenary jurisdiction over education suggests that the framers of the Constitution did not feel bound by convention to restrict the provinces to historic structures or models. Legislative reform since Alberta joined Confederation denies the existence of a belief in binding models of education. The new scheme therefore does not violate a constitutional principle or convention of reasonable autonomy.}\textsuperscript{31}

While that particular case related to school funding, it is suggested that the same principles apply to all other aspects of school established as a result of s. 93 of the Constitution Act, 1867

\textsuperscript{30} School Act, Section 3: Diversity in shared values

\textsuperscript{31} Public School Boards’ Assn. of Alberta v. Alberta (Attorney General), [2000] 2 SCR 409, 2000 SCC 45. The quote is from the headnote to that case. This case offers a cogent definition of what religion is and the scope of s.2(a). “Sincere” religious belief is all that is required to fit within the definition of Section 2(a): “...the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials”. It is this latter portion that differentiated this case from those that came before it. While religious leaders and commentators were of the view that the appellant’s beliefs differed from the mainstream of the religion, the Court found that they did not have to conform to the mainstream but only that the appellant himself have the sincere belief.
and s. 17 of the *Alberta Act* and the through the *School Act* and the other laws and regulation passed by the Alberta Legislature in relation to those schools.

The Supreme Court of Canada decision in *R. v. Jones* summarizes the idea that schools, including denominational schools, and school parents must otherwise meet the requirements of and comply with all relevant provincial legislation, regulation, policy and curriculum requirements:

> Even assuming that liberty used in s. 7 of the Charter does include the right of parents to educate their children as they see fit, the impugned provisions of the *School Act* do not deprive them of that right in a manner that is not in accordance with the principles of fundamental justice guaranteed by that section. The Act created a system which ensures compliance with the requirements that the province considers necessary to advance its interest in the quality of education. It did so by providing for certain standards in the Act and the regulations, and by delegating to the school authorities the power to particularize the requirements within the general confines of the Act. Although the school authorities have a vested interest in the system, it seems normal enough to refer a question of efficient instruction within the Act to a school inspector or a superintendent of schools who is knowledgeable of the requirements and workings of the educational system under the Act. This type of administrative structure is not in itself so manifestly unfair as to violate the principles of fundamental justice. The certifying process engaged in by the school authorities does not demand the safeguards surrounding a judicial decision. It is sufficient to protect the individual when they come to deal with his application. The court would no doubt intervene if, in exercising their functions, the school authorities sought to impose arbitrary standards or if they, in other respects, acted in a manner that was fundamentally unfair. Such would be the case with the imposition of standards extraneous to educational policy under the Act or with a failure to examine the facts or to fairly consider the appellant's representations.\(^\text{32}\)

### 5.2.8.3 Schools and the Charter

Further, if the supremacy of the Constitution expressed in s. 52 of the *Canada Act, 1982* is to be meaningful, then subject to the specific rights granted pursuant to s. 93 of the *Constitution Act, 1867* and s. 17 of the *Alberta Act*, and as emphasized in s. 29 of the *Canada Act, 1982*, all acts taken pursuant to powers granted by law will also be subject to the Constitution\(^\text{33}\) and will therefore be subject to s. 15 and the other rights granted in the Charter and the AHRA. This also

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\(^{33}\) per Dickson, J. in *Operation Dismantle v. The Queen*, [1985] 1 SCR 441, 1985 CanLII 74 (SCC). Such delegation is also referred to in the Jones case, ibid.
apples to those to whom governments delegate authority, including school boards and their appointees. The Supreme Court of Canada explained the principle34:

I think it obvious that [Hospital Board] Regulation 5.04, if made by government would qualify as a law, and that it is unnecessary to explain its characterization as such at any great length. ... It is also clear that the "law" in question comprehends not just Regulation 5.04 alone, but the policy which is followed in its application to those who come within its terms as well. It would be incongruous if our entitlement to equality "before and under the law" and to the "equal protection and equal benefit of the law" did not reach the manner in which a law was interpreted and enforced by those charged with its operation. It will often be this process of interpretation and enforcement that determines the impact that a law has on the lives of those who come within its scope.

As discussed above, some schools in Alberta (i.e., denominational schools) have a right to provide religious instruction and promote religious values, and this cannot be invalidated by the rights granted in the Charter. But apart from the specific rights granted to denominational schools in s. 93 of the Constitution Act, 1867 and s. 17 of the Alberta Act, all other activities in schooling, whether in denominational schools or in other schools or schooling established under the School Act, are subject to the Charter and the AHRA.

As the Supreme Court of Canada has stated,

Any analysis of denominational school rights must take as its starting point the guarantees contained in s. 93(1) of the Constitution Act, 1867. If the rights claimed are not found in this subsection, I fail to see how other sections of the Constitution, in particular s. 2(a) of the Charter, can be used to enlarge upon s. 93's constitutionally blessed scheme for public funding of denominational schools. Section 93 is a comprehensive code with respect to denominational school rights. As a result, s. 2(a) of the Charter cannot be used to enlarge this comprehensive code."35.

While this was an Ontario case and therefore only addressed s. 93 of the Constitution Act, 1867, we suggest that the same analysis applies to the Alberta Act and rights conferred thereunder.

Charter and Alberta Human Rights Act rights are also not absolute: the rights they grant are subject to s. 1 of the Charter and “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

34 Stoffman v. Vancouver General Hospital, [1990] 3 SCR 483, 1990 CanLII 62 (SCC), per LaForest, J.
5.2.8.4  

Schools and religious belief

The State is in no position to be, nor should it become, the arbiter of religious dogma. It is not the role of governments or courts to decide what any particular religion does or does not espouse or what followers do or do not believe. The Supreme Court of Canada has affirmed that freedom of religion ensures that every individual must be free to hold and to manifest without State interference those beliefs and opinions dictated by one’s conscience. This freedom is not unlimited, however, and is restricted by the right of others to hold and to manifest beliefs and opinions of their own, and to be free from injury from the exercise of the freedom of religion of others. As the Court stated:

While it is difficult to conceive of any limitations on religious beliefs, the same cannot be said of religious practices, notably when they impact on the fundamental rights and freedoms of others.

Freedom of religion encompasses the right of parents to educate their children according to their religious beliefs; however, in this area as well, parental rights are also subject to reasonable limitations. While parents are free to engage in religious practices themselves, those activities may be curtailed where they interfere with the best interests of the child without thereby infringing the parent’s religious freedoms. There is no dispute in the case law as regards this principle - even where the religious rights of a parent have been recognized, courts have nonetheless imposed conditions on their exercise where warranted by the interests of the child. Arguably, this would be even more the case where the exercise of religion by one parent interferes with the best interest of another parent’s child.

To further complicate the notion of parental rights in relation to their children, the School Act also seems to accept the notion that, at a certain age, the student herself, although still a minor in law, has a right to act and make decisions for herself. This notion of a mature minor is recognized elsewhere in law, such as in the area of family law where judges may hear a minor’s opinion as to which parent the minor wishes to live with in situations of family breakdown. The Bill 10 amendment seemed to acknowledge that a student has a right to pursue what is in her own best interest by placing the onus on the student of appealing a Board’s refusal to allow a GSA.

38 Ibid.
39 Ibid.
41 Young v. Young, [1993] 4 S.C.R. 3
42 See, for example, s. 123 and 124 of the School Act which grant the parent of a student, or the student if 16 or older, the right to appeal certain decisions (or refusal to make decisions). A similar provision is contained in s. 42 of the new Education Act.
While no submissions were made to RMCLA’s public consultation by officials on behalf of denominational schools, we have been provided with copies of the Pastoral letters issued by the Catholic Archbishop of Edmonton\(^{43}\), the Bishop of Calgary\(^{44}\) and the Bishop of St. Paul\(^{45}\). The Archbishop of Edmonton acknowledges that “We fully support the government's laudable goal of fostering safe environments in schools. In fact, we already have policies for this very purpose. Any legislation aimed at this objective should demonstrate to all vulnerable students that they are embraced by the province’s concern.” The Bishops of Calgary and St. Paul make statements to similar effect. Furthermore, the Catholic Bishop of Calgary also states:

*In the eyes of the Catholic Church, every human person is unique and irreplaceable gift created by our loving God and called to be his son or daughter. Created in the image and likeness of God and redeemed by the blood of Christ, every person possesses an intrinsic dignity that must be respected. The Catechism of the Catholic church affirms that persons with same sex attractions “must be accepted with respect, compassion and sensitivity. Every sign of unjust discrimination in this regard should be avoided. These persons are called to fulfill God’s will in their lives(2358).*

The Archbishop and the two Bishops also express the basis of their concerns with the legislation proposed by the government in Bill 10 (and presumably even more so in relation to the earlier Bill 202). The Archbishop expresses that “…our rights as Catholic schools are engaged here. All aspects of school life must be permeated by our faith. The exercise of this right requires the freedom to determine both the name and content of our initiatives so as to accord with our doctrine.” while the Bishop of Calgary states: “The mandating of Gay Straight Alliances (GSAs) is problematic for a number of reasons. It infringes parental authority over their children, the freedom to instruct one’s children in a manner consistent with their faith, and citizens right to manifest their religious beliefs by worship and practice in the absence of coercion or constraint by government.”

Nothing here is intended to suggest that denominational schools do not have a right to teach their religious doctrine, including, for some, the belief that homosexuality is a sin. Denominational schools do have such rights by virtue of the constitution while private or charter or ‘home’ schools do not have a constitutional right to do so. But there is nothing in either bill that affects the school’s right to teach their religious beliefs and doctrine and to provide religious education. The GSAs proposed by both Bill 10 and 202 are voluntary organizations in the sense that students may choose whether to participate. Further, neither bill required that all schools have GSAs; rather, proposed legislation only require schools to allow GSAs if a student requests one. No course of study is proscribed for the GSAs; rather, they


\(^{45}\) http://www.caedm.ca/Portals/0/pastoral-scene/2012-12-12_BishopTerrio-Letter-Bill10.pdf
are mutual support organizations, student initiated and populated with the guidance of a teacher or other member of the school community. Nor does either Bill alter in any way a parent’s right to instruct their children in matters of religion. Parents are free to instruct their children to attend or not to attend a GSA.

All interested parties appear to agree that programs and policies are needed to ensure safe environments in schools and to embrace and support vulnerable students. It appears, therefore, that the only issue is how to do so. While the Catholic Archbishop of Edmonton claims the right to ensure that “All aspects of school life must be permeated by our faith”, it is also clear that this all-encompassing right is not part of the s. 93 of the Constitution Act, 1867 and s. 17 of the Alberta Act grant and that many aspects of denominational school life are regulated through the School Act and Alberta Education.

The constitutional rights granted for the establishment of denominational schools in s. 93 of the Constitution Act, 1867 and in the Alberta Act are granted to ‘classes of persons’ who had those rights prior to the date of enactment of those Acts. Indeed, poll results indicated that 77% of separate school supporters are in favour of GSAs in schools, and less than 18% are opposed. Another recent poll has reported similar results.

With the greatest of respect, it is difficult to see how any of the rights granted for the establishment of denominational schools in s. 93 of the Constitution Act, 1867 and s. 17 of the Alberta Act would be restricted or diminished by either Bill 10 or 202 or other legislation mandating GSAs in the manner discussed in this report.

5.2.8.5  Dealing with conflicting rights and limiting rights

While Bills 202 and 10 do not appear to breach the constitutional rights of denominational schools as granted by s. 93 of the Constitution Act, 1867 and s. 17 of the Alberta Act, we must move on to look at the Charter and AHRA rights of the parties. Parents of students in denominational schools or other schools might have issues with GSAs and claim religious or equality or other rights set out in Charter. On the other side, the denial of GSAs to requesting students might very well breach or impinge a student’s rights under the Charter (s. 2 and 15, among others) as well as s. 4 of the AHRA. In relation to these claims, we look to the Charter itself, and s. 1 in particular, for assistance in resolving any such issues of ‘conflicting rights’.

The test for “reasonable limits” was established in R. v. Oakes. That case has subsequently been discussed and refined in numerous decisions, but the test has essentially remained unchanged.
To meet the test in s.1, two central criteria must be satisfied:

(i) the objective, which the measures responsible for a limit are designed to serve, must be of sufficient importance to warrant overriding a constitutionally protected right or freedom. The standard must be high in order to ensure that objectives which are trivial or discordant with the principles integral to a free and democratic society do not gain s.1 protection. At a minimum, an objective must relate to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important;

(ii) the party invoking s.1 must then show that the means chosen are reasonable and demonstrably justified, which involves a form of proportionality test having three elements:

(a) the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations;

(b) the means, even if rationally connected to the objective in the first sense, should impair as little as possible the right or freedom in question; and

(c) there must be a proportionality between the effects of the measures and the objective which has been identified as of sufficient importance.

Even if an objective is of sufficient importance, and the first two elements of the proportionality test are satisfied, it is still possible that, because of the severity of the deleterious effects of a measure on individuals or groups, the measure will not be justified by the purposes it is intended to serve. The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified.48

The onus of proof rests on the party seeking to uphold the limitation of Charter rights. The standard is the civil standard, by a preponderance of probabilities, and proof to the standard of science is not required.49

LGBTQ students who wish to form a GSA may rely in doing so on their Charter rights to freedom of assembly, conscience and even belief. The academic literature cited to us seems clear as to the Benefits of GSAs and that the denial of such clubs may cause severe or deleterious effect to students. In that regard, the students might also claim rights under s. 4 of the AHRA. Given the severity of the consequences possibly faced by the students, or those they speak for, the

48 http://www.canlii.org/canlii-dynamic/en/commentary/charterDigest/s-1_en.html
naysaying schools, boards or parents would be required to show a significant diminution in their rights were the club to be granted. RMCLA finds it difficult to see how that argument could be sustained, particularly given that the naysayers, and not the students, would bear the onus of proof in the circumstances.

5.2.8.6 Separate schools and property rights

There was some, although little, mention that separate schools can restrict GSAs given that they have property rights which allow the control of all activities that occur on these properties. If the intent of a GSA is to have a safe place within a school, then forming a GSA off school property is completely inconsistent with the mandate of a GSA. It diminishes the ability and purpose of encouraging a safe and supportive place for LGBTQ people within schools. Moving a GSA to a separate location away from a school is inconsistent with free assembly and free association of students with their fellow students within the schools. Moving GSAs out of schools clearly encourages separation of students based on inherent characteristics.

The premise that separate school boards own the property on which their schools are built — even when wholly built and maintained with private, rather than public, funds — does not grant the unimpeded right to do whatever they choose on those properties. A review of the School Act and regulations provides numerous examples of requirements relating to school operations, properties and management.

RMCLA concluded no credible evidence was provided to support the contention that separate schools have unencumbered property rights relating to the activities conducted on the properties they steward on behalf of taxpayers. As a public service, separate schools must implement policies and procedures of Alberta Education on their property. In order to maintain their accreditation, all schools must implement such policies, whether on public or private property.

5.2.8.7 Conclusion regarding GSAs in schools

Education in Alberta and Alberta Education continue to evolve. Alberta’s new Education Act was passed in the Legislative Assembly and received Royal Assent on December 10, 2012. According to the Department’s website, the government remains committed to moving forward with the legislative processes necessary to proclaim the Education Act. One of the frameworks of that Act is stated to be “Welcoming, Caring, Respectful and Safe Schools” — the Ministry promoting that the Education Act “acknowledges that all education partners have a responsibility to ensure schools are welcoming, caring, respectful and safe. Everyone has a right to feel safe at school.”

that the most efficacious way to do so in relation to the social and emotional support needs of LGBTQ students is through GSAs. Given the above analysis, there do not appear to be constitutional bars to the Alberta legislature ensuring that GSAs are available to all students in Alberta. Even more so, it seems that a denial of GSAs is a breach of the Charter and AHRA rights of LGBTQ students.

5.2.9 Respectful debate and disagreement and the right to dissent

The public consultation process heard that GSAs are able to counter humiliating and hurtful statements made by people described as abusive or bullies. The effect of countering abusive statements made in schools was to create a sense of greater respect for the dignity of all students. Submissions, especially from students, were clear that their freedom of expression within schools were central to engendering and encouraging a dignified environment.

Many individuals continue to make strong, hurtful and even false statements about LGBTQ people. Many individuals wish to continue to forward strong statements against LGBTQ people and may even suggest statements and symbols that forward equality, respect and dignity, and that counter bullying are in fact offensive to their beliefs. This also extends to the idea that some people believe any expression tolerating LGBTQ people “... approve[s] of a lifestyle which is repulsive to them.” Consequently, some school administrators and others use this argument to restrict signs, symbols, and nomenclature referring to LGBTQ people.

As one commentator summarized,

> At issue is that as our country becomes more secular, the religious right to disagree with a lifestyle will be taken away. I agree that all people should be treated with respect and fairly and try to live my life in this way. However, there should still be the right to say that a lifestyle is wrong and sinful if that is your belief. There should be a balance. I believe most Christians and religious people would agree that no one should be bullied or mistreated for any reason and that everyone should be treated with respect and care. I think the concern in this issue is that the movement on this issue will be used to restrict our ability to say that living a life of sin is wrong.

This is also consistent with the Alberta Home Education Association President expressing that bills that tolerate GSAs are “dangerous.51”

We also see the other side - with people making strong, hurtful, and even false statements, about a faith, people of faith, or people of different faiths.

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We will never achieve tolerance and understanding in our society by avoiding debate or by upholding one group’s rights over the rights of another group. On the other hand, if we seek or settle for the lowest common denominator then all Albertans will be relegated to function at that lower level. Rather than acquiesce to this diminishment, Albertans would benefit from learning about each other and — through discussion to foster understanding and informed debate — we must counter the expression of one opinion with opposing opinions. The short-term and long-term benefits of this approach multiply further when we stand up for each other.

The broader Alberta community can enjoy the spectrum of benefits with legislation strengthening freedom of expression coupled with public programs to encourage expression and respectful discussion of opinions. We need to raise the entire level of discussion in our province. Legislation restricting debate on any issue within schools or in society generally would seem to impede the ability to express ones beliefs, on the one hand, and, on the other hand, the ability of others to counter statements that others might consider abusive.

The ability to counter offensive or hurtful statements requires strong adherence to fundamental liberties associated with freedom of expression and conscience. As a civil liberties organization we firmly believe that negative speech should be opposed by counter-speech. We should not be afraid of debate, even lively debate. Religious and secular members of our society should be encouraged to discuss their views with each other, especially the different and sometimes difficult reaches of our various beliefs. Only then can we begin to understand each other. From understanding comes respect. That does not mean we have to agree but even where we disagree we do need to learn to respect.

Closing or restricting debate and expressive ways of countering messages that one might find offensive would seem to be inconsistent with the entire intent of the Charter and the Alberta Bill of Rights. For example, the AHRA in section 3 states,

**Code of Conduct**

**Discrimination re publications, notices**

3 (1) No person shall publish, issue or display or cause to be published, issued or displayed before the public any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a class of persons, or

(b) is likely to expose a person or a class of persons to hatred or contempt because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject. 52

The subjective nature of subsection b, in particular, may apply to any statement that is simply offensive for any side of an argument. For example, statements within the Alberta Home Education Association President’s letter could be deemed offensive enough as to expose a person to contempt. In the same way, some very strong statements by presenters in favour of GSAs against those with strong religious beliefs may be deemed as equally offensive and exposing a person to contempt. Further, Section 3(2) compounds the problem by deeming that no ‘muzzling’ of expression by s. 3(b) is ‘deemed’ to interfere with the free expression of opinion.

Section 3(b) of the AHRA provides an opportunity for continuing conflict among members of our society via the Alberta Human Rights Commission. As written and interpreted, the clause provides a means by which a person may use an arm of the state to address their subjective sense that they have been offended. While the Human Rights Commission pursues the case on behalf of the complainant, the defendant must bear the cost of defending themselves and is denied defences that should normally be available at law in such cases (i.e., truth). Rather than legislation such as 3(b) that has the effect of chilling debate, we should be augmenting the respectful exercise of expressive rights by developing various legislative and programatic means to promote respectful free expression in society generally. We must encourage, rather than stifle, discussion and debate as well as respectful disagreement and dissent. Students also need to learn fundamental interpersonal and social skills such as actively listening to and understanding other people’s views in order to assess and express their own. Programs that help us to achieve this will benefit our society and its growth.

5.2.10 Appeals

The issue of appealing school board decisions to block GSAs, or to restrict their activities, was raised during the public consultations. It was noted that the responsibility for appeal should not be placed on children. It was established earlier, in the context of the duty to protect students, there should be a positive obligation to provide GSAs when they are requested, especially as a mitigation intervention for harm directed at LGBTQ students.

Requiring students from the likely ages of 10-18 to challenge the decision of their school administrators and/or their school board in court or with the Minister of Education guarantees that many children will see them suffer in silence as their rights are denied. This is a detrimental impact that greatly outweighs any benefit conferred on the rights of parents and separate/denominational schools to freedom of religion. It remains appropriate to place the onus on the school boards to persuade the courts that their rights are in fact infringed as these boards have the means and strength to do so.

In addition, the refusal or unreasonable delay by school authorities in creating GSAs when requested to do so places a disproportionately onerous burden upon students who are already
marginalized and vulnerable. As outlined in the Constitution and upheld by the Supreme Court of Canada, principles of fundamental justice must be followed, and restricting rights of students by placing an onerous burden on students to create a GSA or appeal school’s blocking of GSAs would appear to be subject to challenge under the AHRA and/or Charter.

The responsibility of appeal should be placed on adults with the resources and training to engage in legal appeals. These procedures are already available through the Provincial and Canadian court systems. Victims of abuse and vulnerable youth should not be further saddled with responsibility to advocate for themselves through an obligation to appeal decisions that are discriminatory.

Consequently, if there are appeals to be made, then school administrators or parents may appeal the positive obligation to provide GSAs when they are requested. Given Canadian law already provides avenues for appeal, no additional legislation is required for any adult to appeal to a court to stop enactment of any part of legislation. Additionally, if expressive, associative, assembly, religious or conscience rights are deemed diminished or denied by existence of a GSA in any school, then the AHRA provides for a complaint process to initiate rectify the situation.

RMCLA concludes that if students voluntarily choose a GSA and a school objects, then it becomes incumbent upon the school authorities to give it, even while it may appeal the legislation to the courts.
6.0 Proposed New Legislation and Rationale

Based on the submissions made to the Standing Policy Committee on Human Rights, the reports of the panellists to RMCLA and the principles discussed above, the following are our recommendations.

6.1 Sexual Orientation and Gender Identity

Bring the Alberta Bill of Rights (ABR) and the Alberta Human Rights Act (AHRA) into harmony with each other and up to date in relation to Supreme Court of Canada decisions regarding fundamental respect for the dignity of the person.

 Recommendation: Include the words “sexual orientation” and “gender identity” as prohibited grounds for discrimination in both the ABR and the AHRA.

In the educational context, this would also involve ensuring that schools have codes of conduct that are consistent with both the ABR and AHRA.

6.2 Canadian Charter of Rights and Freedoms

As noted earlier in this report, the Supreme Court of Canada read into Alberta’s AHRA that it must include “sexual orientation” as a prohibited form of discrimination. This generally applies to all public services, including education.

Since all laws made by Parliament and Alberta’s legislature are subject to Canada’s constitutional enactments, including the Canadian Charter of Rights and Freedoms, there is no need to embed mention of the Charter in the Education Act for that purpose.

 Recommendation: Do not make special mention in the Education Act that it is subject to the Canadian Charter of Rights and Freedoms.”

6.3 Parental Rights

Parental rights are not rights in a vacuum but rather emanate from the children themselves. Neither are such ‘rights’ absolute. Parental rights as described by the United Nation’s statements on the rights of the child are conferred so that parents may care for their children and act in the best interests of the child, not necessarily of the parent’s personal interests. Canadian laws and Supreme Court of Canada decisions are consistent with this principle. The duty to protect minors takes precedence over any “right” or other authority of their parents.

Parental rights are more akin to a privilege to exercise the rights of another individual (the child); and such authority diminishes over time as the minor matures. Thus parental “rights” are not analogous to the other rights listed in the Alberta Bill of Rights, and merely including “parental rights” in that legislation together with other rights would not clarify or identify these underlying principles or the complex nature of parental rights.
Arguably, the law relating to parental authority is already well established or settled. Unintended consequences are likely to flow from enshrining parental rights into the Bill of Rights by diminishing the importance of the underlying duty to protect minors or diminishing a parent’s responsibility to act in the best interest of the child through whom the ‘right’ flows to the parent. A great deal more study of such unintended and other consequences is required in various areas of law such as child welfare, family, adoption, health and mental health, criminal, agency, trusts, banking and many others. Paradoxically, including ‘parental rights’ in the Bill of Rights without a great deal of definition and without amendment to numerous other laws may point toward many of its limitations and actually erode in the public’s mind the sense of what parental rights ought to be.

**Recommendation:** We recommend against the inclusion of “parental rights” in the Alberta Bill of Rights or in the Alberta Human Rights Act.

### 6.4 Opt-Out Clauses

Section 11.1 of the *Alberta Human Rights Act* is clearly inconsistent with the duty to protect and inform, avoidance of harm, and constitutional protections of fundamental freedoms. It is also inconsistent with school codes of respect and with section 31 of the *Education Act*. Students, religious leaders, and educators all suggested that human sexuality should be taught within the context respect for all persons’ dignity and oriented toward relationship development, regardless of any mention of sexual orientation or gender identity.

The opt-out clause is also inconsistent with the mature minor doctrine, “If a mature minor does in fact understand the nature and seriousness of her medical condition and is mature enough to appreciate the consequences of refusing consent to treatment, then the state’s only justification for taking away the autonomy of that young person in such important matters disappears.” This principle would also seem to apply to the topic areas mentioned in s. 11.1.

With respect to procedural fairness, the Supreme Court of Canada was also clear in the above case, “…failure to leave room for the young person to rebut the presumption of incapacity violates fundamental procedural fairness.”

**Recommendation:** We recommend that section 11.1 be removed from of the *Alberta Human Rights Act* and that it not be moved to the *Education Act*, or to any other statute.

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6.5 Existence of GSAs

A GSA is not different from any other club or sport in its voluntary membership nature. However, it is different in the impact it has shown to have on schools. It is worth repeating that “the presence of a GSA, or the existence and enforcement of specific anti-bullying policies, may influence the overall school climate enough to reduce discrimination and other stressors among sexual minority youth and, in turn, may help prevent suicidal ideation and suicide attempts.” It is a known factor in stopping physical and emotional abuse in schools.

Given that students are free to choose to join the club, or to choose not to join the club, the existence of these clubs should not be offensive to the rights or sensibilities of parents, students and teaching staff who choose not to participate. The freedom of expression, association, conscience, religion and security within the club does not take away from or otherwise diminish parental or school authority, or the freedom of expression, association, conscience, religion or security of those who choose not to, or who instruct their children not to, join the club. It is only when the club is barred from existing that one of those groups is denied their constitutional freedoms.

Given the known harm of abusive behaviours in schools, the probability that such behaviours would continue without the mitigation a GSA can provide, and that schools have a proximal relationship to these incidents, denying permission for a GSA could be construed as a failure — by school officials, community leaders, and others who block GSAs — in their duty to the children and parents they serve.

Given the above, the duty to protect and to avoid or mitigate harm makes it evident that GSAs should be permitted when requested by students. The tangible benefits far outweigh the potential minor deleterious effects on the sensibilities or freedoms of a few.

**Recommendation:** We recommend that legislation be enacted to require that all school Boards and other authorities allow GSAs in any school in Alberta that is accredited or otherwise authorized to operate under the School Act (or the Education Act once proclaimed) when permission to form a GSA is requested by a students of any such school.

While all clubs in schools operate under the auspices of a teacher or other staff member, we recognize that appropriate teachers or staff members might not be available in all schools. Where a school cannot appoint an appropriate teachers or staff member, the Minister may designate another appropriate and responsible adult to perform such function.

In cases where a school board or school refuses or fails in its obligations to establish or permit the establishment of a GSA pursuant to the legislation that school board or school must immediately report that fact to the Minister. The Minister, or the Minister’s designate, would then be obliged to ensure that, acting in the best interest of the requesting student or students,
an appropriate club or program is established to support the needs of the requesting student or students or, where the Minister deems it appropriate, the students generally of the school in question.

6.6 Naming of GSAs

The Catholic Archbishop of Edmonton has argued that,

All aspects of school life must be permeated by our faith. The exercise of this right requires the freedom to determine both the name and content of our initiatives so as to accord with our doctrine.  

This is the primary argument for not allowing “gay” as part of the nomenclature for a GSA. It is a restriction of free expression on students without provision of strong rationale why this right must be restricted. As indicated above, however, this appears to exceed the constitutionally protected rights of denominational schools and encroaches on the authority of the Alberta legislature as relates to schools.

It is worth reiterating the Supreme Court of Canada’s approach adopted by the Chief Justice and Major J. in Chaoulli v. Quebec (Attorney General), 2005 SCC 35 (CanLII). In discussing arbitrariness, the Chief Justice and Major J. said:

In order not to be arbitrary, the limit on life, liberty and security requires not only a theoretical connection between the limit and the legislative goal, but a real connection on the facts. The onus of showing lack of connection in this sense rests with the claimant. The question in every case is whether the measure is arbitrary in the sense of bearing no real relation to the goal and hence being manifestly unfair. The more serious the impingement on the person’s liberty and security, the more clear must be the connection. Where the individual’s very life may be at stake, the reasonable person would expect a clear connection, in theory and in fact, between the measure that puts life at risk and the legislative goals …paternalism should always be kept to a minimum and carefully justified.

The principle in this statement is unambiguous: Restrictions on fundamental freedoms must have clear, logically connected, and very strong rationales.

The public consultations heard repeatedly from students and from students’ parents who emphasized the importance of the word “gay” as a defining factor in the title and mandate of the club. They further indicated that not acknowledging this reality constitutes an omission that reinforces the very harms that GSAs are intended to mitigate.

54 See footnote 34 above.
It would be arbitrary and presumptuous to assume that no mature minor has the capacity to decide the name of their club, and whether or not to include the word “gay.” It is neither arbitrary nor presumptuous to give students the opportunity to demonstrate that they have sufficient maturity to do so: on the contrary, permitting students to demonstrate their increased independence, maturity and cognitive ability it is a fundamental aspect of an effective education.

Furthermore, the consultations found no compelling evidence that including “gay” or “lesbian” in the name of a club is deleterious to any religious or conscience rights. Nothing in the name of a club affects the right or ability of a school — denominational or otherwise — to teach or otherwise prescribe religious instruction. Students both within and outside of the club are still free to believe whatever doctrine they choose.

**Recommendation:** We recommend that GSAs be specifically permitted to use the name “Gay-Straight Alliance” as part of club names or another name that may include the word “gay” or the word “lesbian”. In other respects students and school administration should be required to work collaboratively to choose respectful and appropriate names for school clubs based on the nature and purpose of such clubs.

### 6.7 Locations

The intent of a GSA is to have a safe place within a school. Forming a GSA off school property defeats the purpose of a GSA in a number of ways by diminishing its ability to encourage a safe and supportive place for LGBTQ people within a school. Off-campus GSAs would interfere with students’ ability and right to free assembly and free association with fellow students within their school; and it unduly encourages separation of students based on inherent characteristics (and prohibited grounds within the Charter and AHRA).

Given that schools do not have unencumbered property rights relating to the activities conducted on school property, the deleterious effects on LGBTQ students, and the low likelihood that positive factors of GSAs would flow back to the school generally if GSAs were required to meet off school property, we conclude that they must and indeed need to be allowed to meet on school property.

**Recommendation:** We recommend that, when formed, GSAs be mandated to meet on school property.
6.8 Appeals

The onus for appealing decisions made by adults should not be placed on children. Given our recommendation that GSAs be mandated when requested by students, the responsibility of appeal should be placed on adults should such adults object to the decision of other adults. Appeal procedures are already available through Canadian law and court systems that are designed to take into account all facets of a situation and context. As a result, there does not appear to be a need to mention appeals in the legislation.

However, if appeal rights or procedures are mentioned in legislation addressing GSAs, then the obligation should be reversed from the original amendment to Bill 10 to place the obligation to appeal on the Board, school administration or parents who wish recourse to the courts.

If students voluntarily create and participate in a GSA and a school administrator or parent within the school objects, then it should be clear in the legislation that it is the responsibility of the school authorities to continue to offer the GSA, even while the school administration, parents or others appeal the legislation to the courts.

**Recommendation:** We recommend that no appeal clauses be placed in any new legislation concerning GSAs. Where any appeal is authorized in relation to GSAs or any GSA related decision, the obligation and the cost of any such appeal must be placed on schools or boards that wish to make applications to a court.

6.9 Strengthening freedom of expression in Alberta

Finally, new ways must be found to ensure that people in Alberta have effective means to counter statements they might find abusive or offensive — without having to resort to the courts or the Alberta Human Rights Commission. This would include ensuring that people with strongly held beliefs on any side of an argument are free to express their opinions. Legislation and programs supporting respectful and free expression in Alberta would augment the ability of GSAs to be formed and operate. It may even create adult role models for students on all sides of an issue.

**Recommendation:** We recommend the repeal of Section 3 of the Alberta Human Rights Act entirely or, at the very least, the repeal of subsections 3(1)(b) and 3(2).

**Recommendation:** We also recommend the development of respectful debate and respectful disagreement programs, to be delivered both as part of the regular school curricula and through the auspices of the Alberta Human Rights Commission and other agents of civil society.
7.0 Appendices

7.1 Legislative Framework for religious rights, denominational schools, Charter rights, Alberta human rights, and regulation of schools

The Legislative Framework:

The general authority in Canada to establish and control schools is granted to the provinces further to s. 93 of the Constitution Act, 1867 55:

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:
(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:
(3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:
(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

Within the Province of Alberta, the establishment of schools, and particularly denominational schools, is further governed by s. 17 of the Alberta Act 56:

17. Section 93 of the Constitution Act, 1867 shall apply to the said province, with the substitution for paragraph (1) of the said section 93, of the following paragraph:

“(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the North-west Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.”

(2) In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment be no discrimination against schools of any class described in the said chapter 29.

55 The Constitution Act, 1867, 30 & 31 Vict, c.3 (Canada) [formerly the British North America Act, 1867 (The “B.N.A. Act”)].
56 4-5 Edward VII, c. 3 (Canada).
(3) Where the expression "by law" is employed in paragraph (3) of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30; and where the expression "at the Union" is employed, in the said paragraph (3), it shall be held to mean the date at which this Act comes into force.

In discussing these issues, we also look at the relevant provisions of the Canada Act, 1982 including Part 1 of that Act, the Canadian Charter of Rights and Freedoms (the “Charter”):

Rights and freedoms in Canada
1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental freedoms
2. Everyone has the following fundamental freedoms:
   (a) freedom of conscience and religion;
   (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
   (c) freedom of peaceful assembly; and
   (d) freedom of association.

Life, liberty and security of person
7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality Rights
   Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.  

Affirmative action programs
(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

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

Rights respecting certain schools preserved
29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

57 The Canada Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c. 11.
Application of **Charter**

(1) This **Charter** applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Part VII of the **Canada Act, 1982**\(^59\) includes:

**Primacy of Constitution of Canada**

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

**Constitution of Canada**

(2) The Constitution of Canada includes:

(a) the **Canada Act 1982**, including this Act;

(b) the Acts and orders referred to in the schedule; and

(c) any amendment to any Act or order referred to in paragraph (a) or (b).

The **Alberta Act, 1905** is referred to in the schedule.

In addition, the **Alberta Human Rights Act**\(^60\) (“AHRA”) also has bearing on these matters:

**Preamble**

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world;

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation;

**Effect of Act on provincial laws**

1 (1) Unless it is expressly declared by an Act of the Legislature that it operates notwithstanding this Act, every law of Alberta is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act.

(2) In this Act, “law of Alberta” means an Act of the Legislature of Alberta enacted before or after the commencement of this Act, any order, rule or regulation made under an Act of the Legislature of Alberta, and any law in force in Alberta on January 1, 1973 that is subject to be repealed, abolished or altered by the Legislature of Alberta.

**Code of Conduct**

**Discrimination re publications, notices**

3 (1) No person shall publish, issue or display or cause to be published, issued or displayed before the public any

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59 The Canada Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c. 11
60 RSA 2000, c. A-25.5.
statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a class of persons, or

(b) is likely to expose a person or a class of persons to hatred or contempt because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject.

Discrimination re goods, services, accommodation, facilities

4 No person shall

(a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or

(b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public,

because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons.

Crown is bound

12 The prohibitions contained in this Act apply to and bind the Crown in right of Alberta and every agency and servant of the Crown in right of Alberta.

In addition to the above, the establishment of schools, including denominational schools, is governed by the School Act of Alberta. That act, among its various provisions, includes:

Religious and patriotic instruction or exercises

50 (1) A board may

(a) prescribe religious instruction to be offered to its students;

(b) prescribe religious exercises for its students;

(c) prescribe patriotic instruction to be offered to its students;

(d) prescribe patriotic exercises for its students;

(e) permit persons other than teachers to provide religious instruction or exercises to its students.

(2) Where a teacher or other person providing religious instruction or exercises or a teacher providing patriotic instruction or exercises receives a written request signed by a parent of a student that the student be excluded from religious instruction or exercises or patriotic instruction or exercises, or both, the teacher or other person shall, in accordance with the request of the parent, permit the student

(a) to leave the classroom or place where the instruction or exercises are taking place for the duration of the instruction or exercises, or

61 The School Act, c. S-3 RSA 2000. This Act is in the process of being replaced by the Education Act which, while passed by the Legislature, has not been proclaimed in force (as of the date of this writing). S. 50 of the School Act is repeated as s. 58 of the Education Act. S. 60 of the School Act does not appear to have been repeated in the Education Act.
(b) to remain in the classroom or place without taking part in the instruction or exercises.

**Powers of separate school boards**

59 Unless otherwise provided for in this Act, the board of a separate school district

(a) possesses and may exercise all the rights, powers and privileges of,

(b) is subject to duties and liabilities the same as those of, and

(c) has the same method of government as,

the board of a public school district.
7.2 Poll Results on GSAs and Related Legislation

The Rocky Mountain Civil Liberties Association conducted a poll regarding legislation concerning Gay-Straight Alliances in Alberta Schools in the last 10 days of January, 2015.

The polling sample was randomly selected from 2,838 respondents to the online poll, and matched with criteria that as closely as possible reflects the Alberta electorate. Age and gender, as well as religious, political and school affiliations were used to match the sample to Alberta demographics. Respondents under 18 or not residing in Alberta were rejected and neither included as a respondent nor used in the matched sample.

Based on 2.4 million eligible voters in Alberta, the sample of 1,355 is likely to produce results that are with ± 2.6%, 95 times out of 100.

Two variables were used to group question results. One separated result was based on political party support (Progressive Conservative Association, Liberal Party, New Democratic Party, Wildrose Alliance, and Other which included the Alberta Party, Green Party of Alberta, and other parties registered with Elections Alberta). The second separated result was based on support for the type of school system (public, separate, private, home schooling, and other which included charter, special and alternative schools).

Sample Matched on variables, the number of respondents and percentage included in analyses:

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Note: Respondents could choose multiple systems. For example many separate school supporters also supported public schools.
7.2.1 Table 1. The number of persons who agree to allow GSAs in all schools, separated by support for school system.
The question in the poll was “Should all schools in Alberta, including public, separate, private and/or religious schools, have gay-straight alliances if students in the school request one?”
7.2.2 Table 2. The percent of persons who agree to allow GSAs in all schools, separated by support for school system.
Table 3. The percent of persons who agree to allow GSAs in all schools, separated by political party supporters.
7.2.4 Table 4. The number of persons who agree to allow GSAs in all schools, separated by political party supporters.
Table 5. Number of people who agree to remove the opt-out clause (section 11.1) from the Alberta Human Rights Act, separated by political party supporters.

The question in the poll was “Currently, section 11.1 of the Alberta Human Rights Act restricts teachers from using teaching materials or discussing issues of religion, sexuality, or sexual orientation in schools without parental consent. If classes are to occur or materials are to be distributed concerning these subjects, then parents may opt their children out of these classes or teaching activities. If teachers receive consent from parents in advance, then parents may lodge a process toward human rights complaints. It has been proposed that section 11.1 should be removed from the Alberta Human Rights Act. Do you agree?”
Table 6. Percentage of people who agree to remove the opt-out clause (section 11.1) from the Alberta Human Rights Act, separated by political party supporters.
### Table 7. Number of people who agree to remove the opt-out clause (section 11.1) from the Alberta Human Rights Act, separated by support for school system.

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</table>

7.2.7
### Percent who Agree to Remove Opt-Out Clause from AHRA

<table>
<thead>
<tr>
<th>School Type</th>
<th>Yes</th>
<th>No</th>
<th>Do Not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>75.2%</td>
<td>12.3%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Separate</td>
<td>63.3%</td>
<td>20.2%</td>
<td>16.5%</td>
</tr>
<tr>
<td>Private</td>
<td>41.1%</td>
<td>39.1%</td>
<td>19.9%</td>
</tr>
<tr>
<td>Home</td>
<td>52.9%</td>
<td>16.2%</td>
<td>30.9%</td>
</tr>
<tr>
<td>Other</td>
<td>70.1%</td>
<td>16.9%</td>
<td>13.0%</td>
</tr>
</tbody>
</table>

#### 7.2.8 Table 8. Percentage of people who agree to remove the opt-out clause (section 11.1) from the Alberta Human Rights Act, separated by support for school system.
7.2.9 Table 9. Percentage of people who agree to move the opt-out clause to the Education Act, separated by political party supporters.

The question in the poll was “The provision that parents may opt their children out of classes teaching religion or human sexuality was suggested to be moved from the Alberta Human Rights Act to the Education Act to ensure parents still had this ability. Do you agree that this clause should be placed into the Education Act?”
7.2.10 Table 10. Percentage of people who agree to move the opt-out clause to the Education Act, separated by support for school system.
7.2.11 Table 11. Percentage of people who agree to allow GSAs to be blocked if schools wish, separated by political party supporters.

The question in the poll was “Should any school, including public, separate, private and/or religious schools, have the ability to stop the formation of gay-straight alliances even if the school's students request one?”
7.2.12 Table 12. Percentage of people who agree to allow GSAs to be blocked if schools wish, separated by support for school system.
7.2.13 Table 13. Percentage of people who agree there should be restrictions on the use of the words “Gay-Straight Alliance,” separated by political party supporters.

The question in the poll was “If all schools in Alberta are obligated to help students establish gay-straight alliances, and if the wording "gay-straight alliance" is what the students forming the club wish to call it, then should there be any restriction on the use of the name "gay-straight alliance" to describe this club?”
7.2.14 Table 14. Percentage of people who agree there should be restrictions on the use of the words “Gay-Straight Alliance,” separated by support for school system.
Should GSAs be formed on school property?

7.2.15 Table 15. Percentage of people who agree GSAs should be formed on school property, separated by political party supporters.

The question in the poll was “If all schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should these clubs be formed on school property?”
7.2.16 Table 16. Percentage of people who agree GSAs should be formed on school property, separated by support for school system.
### Table 17. Percentage of people who agree “Parental Rights” should be added into Alberta’s Bill of Rights, separated by political party supporters.

The question asked in the poll was “New legislation proposed that parental rights be added to the list of rights to the Alberta Bill of Rights. Do you agree?”
7.2.18 Table 18. Percentage of people who agree “Parental Rights” should be added into Alberta’s Bill of Rights, separated by support for school system.
7.2.19  Table 19. Percentage of people who agree “Parental Rights” should be addressed in a separate bill, separated by political party supporters.

The question in the poll was “Some people suggest that it would be better to have parental rights addressed in a completely different Bill, and not as a part of the Alberta Bill of Rights Act. Do you agree?”
Table 20. Percentage of people who agree “Parental Rights” should be addressed in a separate bill, separated by support for school system.
Table 21. Percentage of people who suggest someone should have the option to appeal to the courts to stop GSA formation, separated by political party supporters.

The question in the poll was “If all schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should someone have the option to appeal to the courts to stop the formation of these clubs?”
Should Someone have the option to appeal to courts to stop GSAs

7.2.22 Table 22. Percentage of people who suggest someone should have the option to appeal to the courts to stop GSA formation, separated by support for school system.
Table 23. Percentage of people who suggest various people should have the option to appeal GSA formation to the courts, separated by who should have the appeal option.

The question in the poll was “If appeals to the courts are to be made to help ensure a gay-straight alliance may exist in a school, then who should be required to make the court appeal?”
Who Should have the option to appeal to courts to stop GSAs

7.2.24 Table 24. Percentage of people who suggest various people should have the option to appeal GSA formation to the courts, separated by support for school system.
### Table 25. Percentage of people who agree codes of conduct should prohibit bullying for any reasons, separated by political party supporters.

<table>
<thead>
<tr>
<th>Party</th>
<th>Yes</th>
<th>No</th>
<th>Do Not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>PC</td>
<td>90.1%</td>
<td>4.5%</td>
<td>5.4%</td>
</tr>
<tr>
<td>Lib</td>
<td>95.8%</td>
<td>2.3%</td>
<td>2.0%</td>
</tr>
<tr>
<td>NDP</td>
<td>96.8%</td>
<td>1.6%</td>
<td>1.6%</td>
</tr>
<tr>
<td>WRA</td>
<td>88.8%</td>
<td>9.6%</td>
<td>1.6%</td>
</tr>
<tr>
<td>Other</td>
<td>89.2%</td>
<td>7.1%</td>
<td>3.7%</td>
</tr>
</tbody>
</table>

The question in the poll was “Should all schools in Alberta, including public, separate, private and/or religious schools, be required to have codes of conduct that include prohibition of bullying for any reason, including bullying based on a person having characteristics different from the bullier, or bullying based on an identified sexual orientation or gender identity?”
Have codes of conduct that prohibit bullying for any reason

7.2.26 Table 26. Percentage of people who agree codes of conduct should prohibit bullying for any reasons, separated by support for school system.
7.2.27 Table 27. Percentage of people who agree codes of conduct include “sexual orientation” and “gender identity” as prohibited forms of discrimination, separated by political party supporters.

The question in the poll was “Should all schools in Alberta, including public, separate, private and/or religious schools, be required to have codes of conduct that include "sexual orientation" and "gender identity" as a prohibited form of discrimination?”
Table 28. Percentage of people who agree codes of conduct include “sexual orientation” and “gender identity” as prohibited forms of discrimination, separated by support for school system.
### Table 29. Percentage of people who agree the Charter of Rights and Freedoms should be mentioned in the Education Act, separated by political party supporters.

<table>
<thead>
<tr>
<th>Political Party</th>
<th>Yes (%)</th>
<th>No (%)</th>
<th>Do Not Know (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PC</td>
<td>68.9</td>
<td>9.3</td>
<td>21.8</td>
</tr>
<tr>
<td>Lib</td>
<td>73.6</td>
<td>7.3</td>
<td>19.1</td>
</tr>
<tr>
<td>NDP</td>
<td>78.5</td>
<td>6.8</td>
<td>14.7</td>
</tr>
<tr>
<td>WRA</td>
<td>43.6</td>
<td>21.3</td>
<td>35.1</td>
</tr>
<tr>
<td>Other</td>
<td>65.1</td>
<td>11.6</td>
<td>23.3</td>
</tr>
<tr>
<td>Overall</td>
<td>67.7</td>
<td>10.3</td>
<td>22.0</td>
</tr>
</tbody>
</table>

The question in the poll was “It was proposed in Bill 202 that the Canadian Charter of Rights and Freedom be added to the Education Act as a guiding document for developing school codes of conduct. Do you agree that the Charter should be mentioned in the Education Act?”
Percent who Agree to the Charter of Rights and Freedoms should be mentioned in Education Act

<table>
<thead>
<tr>
<th>School Type</th>
<th>Yes</th>
<th>No</th>
<th>Do Not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>72.7%</td>
<td>19.9%</td>
<td>7.4%</td>
</tr>
<tr>
<td>Separate</td>
<td>62.4%</td>
<td>22.0%</td>
<td>15.6%</td>
</tr>
<tr>
<td>Private</td>
<td>45.7%</td>
<td>33.8%</td>
<td>20.5%</td>
</tr>
<tr>
<td>Home</td>
<td>61.8%</td>
<td>30.9%</td>
<td>7.3%</td>
</tr>
<tr>
<td>Other</td>
<td>66.7%</td>
<td>22.7%</td>
<td>9.6%</td>
</tr>
</tbody>
</table>

7.2.30 Table 30. Percentage of people who agree the Charter of Rights and Freedoms should be mentioned in the Education Act, separated by support for school system.
7.2.31 Table 31. Percentage of people who agree GSAs should have parental involvement and guidance, separated by political party supporters.

The question in the poll was “If all schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should these clubs have parental involvement and guidance?”
### Table 32. Percentage of people who agree GSAs should have parental involvement and guidance, separated by support for school system.

<table>
<thead>
<tr>
<th>School Type</th>
<th>Yes</th>
<th>No</th>
<th>Do Not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>44.1%</td>
<td>28.5%</td>
<td>33.0%</td>
</tr>
<tr>
<td>Separate</td>
<td>36.2%</td>
<td>33.0%</td>
<td>30.8%</td>
</tr>
<tr>
<td>Private</td>
<td>50.3%</td>
<td>24.5%</td>
<td>25.2%</td>
</tr>
<tr>
<td>Home</td>
<td>42.6%</td>
<td>20.6%</td>
<td>36.8%</td>
</tr>
<tr>
<td>Other</td>
<td>34.3%</td>
<td>31.4%</td>
<td>34.3%</td>
</tr>
</tbody>
</table>
Table 33. Percentage of people who agree GSAs should have teacher involvement and guidance, separated by political party supporters.

The question in the poll was “If all schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should these clubs have teacher involvement and guidance??”
7.2.34 Table 34. Percentage of people who agree GSAs should have teacher involvement and guidance, separated by support for school system.
Table 35. Percentage of people who agree GSAs in separate or religious schools should have religious involvement and guidance, separated by political party supporters.

The question in the poll was “If separate or religious schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should these clubs include religious guidance?”
7.2.36 Table 36. Percentage of people who agree GSAs in separate or religious schools should have religious involvement and guidance, separated by support for school system.
7.3 Alberta Survey About Proposed Gay-Straight Alliance Legislation

Alberta Survey about proposed Gay-Straight Alliance Legislation

Thank you for taking this survey

Thank you for taking the Alberta Survey about proposed Legislation for Gay-Straight Alliances. This survey is part of the Rocky Mountain Civil Liberties Association (RMCLA)'s public consultation on gay-straight alliances in schools. For more information on these consultations, please visit: http://rmcla.ca/publicconsultation.html

It should take less than 5 minutes to complete this survey. Your participation is completely voluntary. You can end the survey at any time, or choose not to answer any question.

We commit to privacy. To enhance your privacy please do not put any identifying information into any comment box. No individual answers will be reported.

The results of this survey and RMCLA's public consultation on Gay-Straight Alliances will be the basis for a report to be presented to the Government of Alberta. To help ensure your privacy, no individual answers will be reported. Only grouped scores and answers will be used in the final public consultation report and reported back to the public.

We encourage you to forward the survey to your friends, family, colleagues and other contacts who might give us additional information. Post it as well to Facebook, Twitter and other social media.

Thank you in advance for completing the survey!

Kelly Ernst, President,
Rocky Mountain Civil Liberties Association

I voluntarily choose to take this survey.

☐ Yes
☐ No
## Alberta Survey about proposed Gay-Straight Alliance Legislation

### First, tell us about yourself

**Where do you live?**
- [ ] Calgary Metro Area
- [ ] Edmonton Metro Area
- [ ] Red Deer
- [ ] Lethbridge
- [ ] Medicine Hat
- [ ] Grande Prairie
- [ ] Fort McMurray
- [ ] Other place south of Calgary
- [ ] Other place north of Edmonton
- [ ] Other place between Calgary and Edmonton
- [ ] I do not live in Alberta
# Alberta Survey about proposed Gay-Straight Alliance Legislation

**Please answer just a few more questions about you**

**What is your age?**
- [ ] 17 or younger
- [ ] 18-20
- [ ] 21-29
- [ ] 30-39
- [ ] 40-49
- [ ] 50-59
- [ ] 60 or older

**What gender do you describe yourself?**
- [ ] Male
- [ ] Female
- [ ] Transgender
- [ ] Other

**What is the highest level of school you have completed or the highest degree you have received?**
- [ ] Less than high school degree
- [ ] High school diploma or equivalent
- [ ] Some college but no degree
- [ ] College Diploma
- [ ] Bachelor degree
- [ ] Graduate degree
<table>
<thead>
<tr>
<th>Alberta Survey about proposed Gay-Straight Alliance Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please answer the following questions about various part of legislation rel...</td>
</tr>
</tbody>
</table>

Do you support adding the words “sexual orientation” into Alberta Human Rights Act's list of prohibited grounds for discrimination?

- Yes
- No
- I do not know

New legislation (Bill 10) proposed that parental rights be added to the list of rights to the Alberta Bill of Rights. Do you agree?

- Yes
- No
- I do not know

Some people suggest that it would be better to have parental rights addressed in a completely different Bill, and not as a part of the Alberta Bill of Rights Act. Do you agree?

- Yes
- No
- I do not know

Currently, section 11.1 of the Alberta Human Rights Act restricts teachers from using teaching materials or discussing issues of religion, sexuality, or sexual orientation in schools without parental consent. If classes are to occur or materials are to be distributed concerning these subjects, then parents may opt their children out of these classes or teaching activities. If teachers receive consent from parents in advance, then parents may lodge a process toward human rights complaints.

It has been proposed that section 11.1 should be removed from the Alberta Human Rights Act. Do you agree?

- Yes
- No
- I do not know
**Alberta Survey about proposed Gay-Straight Alliance Legislation**

The provision that parents may opt their children out of classes teaching religion or human sexuality was suggested to be moved from the Alberta Human Rights Act to the Education Act to ensure parents still had this ability. Do you agree that this clause should be placed into the Education Act?

- [ ] Yes
- [ ] No
- [ ] I do not know

Should all schools in Alberta, including public, separate, private and/or religious schools, have gay-straight alliances if students in the school request one?

- [ ] Yes
- [ ] No
- [ ] I do not know

If all schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should these clubs be formed on school property?

- [ ] Yes
- [ ] No
- [ ] I do not know

If all schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should these clubs have parental involvement and guidance?

- [ ] Yes
- [ ] No
- [ ] I do not know

If all schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should these clubs have teacher involvement and guidance?

- [ ] Yes
- [ ] No
- [ ] I do not know
### Alberta Survey about proposed Gay-Straight Alliance Legislation

If separate or religious schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should these clubs include religious guidance?

- [ ] Yes
- [ ] No
- [ ] I do not know

It was proposed in Bill 202 that the [Canadian Charter of Rights and Freedom](https://www.canada.ca/fra/en/civil-rights/charter-of-rights-and-freedom.html) be added to the Education Act as a guiding document for developing school codes of conduct. Do you agree that the Charter should be mentioned in the Education Act?

- [ ] Yes
- [ ] No
- [ ] I do not know

**Should all schools in Alberta, including public, separate, private and/or religious schools, be required to have codes of conduct that include "sexual orientation" and "gender identity" as a prohibited from of discrimination?**

- [ ] Yes
- [ ] No
- [ ] I do not know

**Should all schools in Alberta, including public, separate, private and/or religious schools, be required to have codes of conduct that include prohibition of bullying for any reason, including bullying based on a person having characteristics different from the bullier, or bullying based an identified sexual orientation or gender identity?**

- [ ] Yes
- [ ] No
- [ ] I do not know
### Alberta Survey about proposed Gay-Straight Alliance Legislation

**Which school system do you currently support?**

- [ ] Public Schools
- [ ] Separate Schools
- [ ] Private Schools
- [ ] Charter Schools
- [ ] Home Schools
- [ ] Other (please specify)

**In the last provincial election, the candidate you voted for was a member of which political party?**


Alberta Survey about proposed Gay-Straight Alliance Legislation

If appeals to the courts are to be made to help ensure a gay-straight alliance may exist in a school, then who should be required to make the court appeal?

☐ Children
☐ Parents
☐ School Principals
☐ Trustees
☐ The Education Minister
☐ Religious leaders
☐ No one should be allowed to appeal to the courts
☐ I do not know

Other (please specify)

If appeals to the courts are to be made to stop the formation of a gay-straight alliance in a school, then who should be required to make the court appeal?

☐ Children
☐ Parents
☐ School Principals
☐ Trustees
☐ The Education Minister
☐ Religious leaders
☐ No one should be allowed to appeal to the courts
☐ I do not know

Other (please specify)

Please add any comments about legislation concerning gay-straight alliances in schools.
Alberta Survey about proposed Gay-Straight Alliance Legislation

Thank you for completing this survey. We invite you to stay informed about the survey by adding yourself to our email list. We will send results to everyone on our email list. The link below is in no way linked to the answers in this survey and will move you away from the survey.

Click here to be added to our list and stay informed about the results of this survey.
http://visitor.constantcontact.com/e.jsp?ll=us&llid=25&sp=cs&m=11037979413966&cs=0&i=2629-4380-87ee-504249272c0

Please remember to click "Done" when you are finished with the survey, otherwise your responses may not be submitted. Thank you.
Alberta Survey about proposed Gay-Straight Alliance Legislation

Should any school, including public, separate, private and/or religious schools, have the ability to stop the formation of gay-straight alliances even if the school's students request one?

- Yes
- No
- I do not know
- Perhaps in some circumstances. Please tell us the circumstances

If all schools in Alberta are obligated to help students establish gay-straight alliances, and if the wording "gay-straight alliance" is what the students forming the club wish to call it, then should there be any restriction on the use of the name "gay-straight alliance" to describe this club?

- Yes
- No
- I do not know
- Perhaps in some circumstances. Please tell us the circumstances

If all schools in Alberta are obligated to help students establish gay-straight alliances when students request one, then should someone have the option to appeal to the courts to stop the formation of these clubs?

- Yes
- No
- I do not know
- Perhaps in some circumstances. Please tell us the circumstances