

Recent Challenges to Teacher Professionalism in Canada's Public Secular Schools: Public Statements, Policies and Legislation that Undermine Teachers' Efforts to Treat 2SLGBTQIA+ Students with Dignity and Respect

Paul T. Clarke & Robyn Trask†

Teachers in Canadian public schools face serious challenges to their professional autonomy when teaching about human sexuality and gender identity while creating an inclusive school environment and ensuring all students, including 2SLGBTQIA+ students, feel safe in schools. Challenges may arise from parents, school trustees and community members. Challenges have also arisen from some provincial governments that have enacted policies and legislation which, in our view, undermine teachers' professional autonomy and run counter to the best interests of vulnerable students. For example, Saskatchewan's Parents' Bill of Rights forbids teachers from using the affirmed name and pronouns of gender diverse students under the age of 16 without parental consent. We argue that undue deference to "parental rights" – against a backdrop of moral panic – interferes with teachers' ability to provide a safe and welcoming school environment, provide students with accurate and relevant information, and model respect for self and others.

† Paul T. Clarke is a professor of educational leadership at the University of Regina. Robyn Trask was called to the bar in Ontario in 2005 and in British Columbia in 2008, where she continues to practice law. She holds a BA (UBC), LLB (UBC) and LLM (Distinction, SOAS University of London).

Les enseignantes et enseignants des écoles publiques canadiennes sont confrontés à de sérieux obstacles à leur autonomie professionnelle lorsqu'il s'agit d'aborder la sexualité humaine et l'identité de genre, mais également de créer un environnement scolaire inclusif, afin que les élèves 2ELGBTQQIA+ se sentent en sécurité à l'école. Ces obstacles viennent de parents, de membres de conseils scolaires et de membres de la communauté en général mais, de façon plus significative, de certains gouvernements provinciaux, dont les politiques et les lois minent la professionnalité enseignante et vont à l'encontre de l'intérêt supérieur des élèves vulnérables. Par exemple, la Charte des droits des parents de la Saskatchewan interdit aux personnes enseignantes d'utiliser, sans le consentement parental, le nom et les pronoms choisis par leurs élèves de moins de 16 ans présentant une diversité de genre à l'école. Nous soutenons que l'importance excessive accordée aux « droits parentaux », dans un contexte de panique morale, compromet la capacité du personnel enseignant d'offrir un environnement scolaire sûr et accueillant, de fournir aux élèves des informations exactes et pertinentes, et de donner l'exemple du respect de soi et des autres.

I. Introduction

Recent expressions of anti-2SLGBTQIA+¹ sentiments in Canada have targeted schools and students, and, as a result, teachers have faced a variety of challenges to their efforts to ensure schools are safe and welcoming places for 2SLGBTQIA+ students. Members of the public, and even some elected school board trustees, have made troubling statements in school board meetings, other public forums, and online. While many school boards have taken proactive steps to support 2SLGBTQIA+ students, provincial governments in New Brunswick, Ontario, Saskatchewan and Alberta have proposed or enacted regressive policies or legislation that constitute a serious obstacle to teachers' work in the classroom and teachers' support of students.²

Sadly, as the case law, legislation, and policy reviewed in this article demonstrate, homophobia and transphobia are still prevalent within Canadian society and schools.³ Among some parents and legislators, there is strong opposition to responsible and age-appropriate education on gender identity, sexual orientation and human sexuality in schools. The level of fear, ignorance, hostility and irrationality is, at times, shocking.⁴ Some authors have described this reaction as a moral panic that aims to perpetuate and safeguard heteronormativity, whereby being heterosexual and cisgendered

¹ 2SLGBTQIA+ is an acronym for Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and additional people who identify as part of the sexual and gender diverse communities. The authors also at times use the acronym SOGI, which is an acronym for sexual orientation and gender identity.

² See New Brunswick Department of Education and Early Childhood Development, Policy 713 (effective August 17, 2020, revised January 1, 2025), online: <gnb.ca/en.html> [perma.cc/3854-B8BP] [*Department of Education*]; *The Education (Parents' Bill of Rights) Amendment Act*, SS 2023, c 46 [*Amended Education Act*]; In Alberta the *Education Amendment Act, 2024 (Formerly Bill 27)*, received assent on December 5, 2024 and is anticipated to be proclaimed on September 1, 2025, see Primary Care Alberta, "Alberta's Education Act" (2025), online: <teachingsexualhealth.ca> [perma.cc/MR7N-RYD3]; On August 22, 2018, Ontario's Minister of Education issued a directive requiring all elementary public school teachers (grades 1 through 8) to teach the 2010 Curriculum for the 2018-2019 school year, see *Elementary Teachers' Federation of Ontario v Ontario (Minister of Education)*, 2019 ONSC 1308 at para 3 [ETFO].

³ See Donn Short, Bruce MacDougall & Paul T Clarke, *Making the Case: 2SLGBTQ+ Rights and Religion in Schools* (Vancouver: UBC Press, 2021) at 42. The authors state: "The fact that homophobia and transphobia still thrive in Canadian schools is disturbing, but not surprising. Homophobic language and harassment are still viewed as a normal part of growing up by many people. Transphobia is real."

⁴ Some common misconceptions and phobias include straight students being converted by their teachers to a different sexual orientation or gender. Some believe that discussion of sexuality in the classroom beyond the narrow heterosexual male/female binary is a sign of pedophilia in the supervising teacher. For more on the irrationality and harmful stereotypes of all of this see, Catherine Lee, "Inclusive Relationships, Sex and Health Education: Why the Moral Panic?" (2021) 37:2 *Management in Education* 107 [Catherine Lee].

are considered the only acceptable norm.⁵ Proponents of excluding classroom discussion on gender identity, sexual orientation and sexuality have claimed that provincial governments must prioritize parents' control over their children and prevent indoctrination by educators.⁶

For example, in 2023 Saskatchewan enacted *The Education (Parents' Bill of Rights) Amendment Act*.⁷ By virtue of this law, teachers are no longer allowed to use the affirmed name and pronouns of their gender diverse students under the age of 16 at school without parental consent.⁸ The new law allows parents to entirely opt their children out of lessons dealing with sexual content.⁹ As is often symptomatic of harmful government action, these changes are reactionary and constitute a substantial interference with the duties of teachers. Thus, they represent a serious challenge to teacher professionalism.

In this article, we review how the courts have approached these issues, including the Supreme Court of Canada's recognition of the discrimination transgender individuals face in Canadian society. We argue that ill-conceived policy, legislation and proposed legislation from New Brunswick, Ontario, Saskatchewan and Alberta, that uncritically privileges parental rights, prevents teachers from providing students with the most accurate and relevant facts, information and values they need to make informed and healthy decisions. Requiring parental consent for the use of one's affirmed name and pronouns means that teachers are unable to respect students' personal autonomy and privacy.

Most of the discussion, and litigation, on these issues has focused on the harm to students caused by unwelcoming school environments. We agree

⁵ See Judith Butler, *Who's Afraid of Gender?* (New York: Farrar, Straus and Giroux, 2024). Butler offers a powerful and coherent counter-narrative to the "anti-gender ideology movements" around the world that are committed to circulating a fantasy, what they call *phantasm*, that gender is dangerous and threatens to destabilize families, the social order, civilization, and even "man" himself.

⁶ Saleema Noon, a member of Sexual Health Educators, has taught sexual health education in British Columbia schools for 25 years through requested workshops. A decade ago, Noon noticed that some parents began voicing concerns when Noon's team raised the topic of sexual orientation during the workshops. Noon claims parents' misgivings, accompanied by aggression and harassment, about the subject are at an all-time high. "Words like "groomer," "indoctrination" and "pedophile" are being thrown around and directed at us. I don't remember anything like that years ago," Ms. Noon said." (See, Caroline Alphonso & Zosia Bielski, "What Are Parents' Rights Groups Actually Fighting for in Schools? And Do Students Want It?", *The Globe and Mail* (6 November 2023), online: <theglobeandmail.com> [perma.cc/LZ7B-MHLP].

⁷ *Amended Education Act*, *supra* note 2.

⁸ *Ibid*, s 197.2(n).

⁹ *Ibid*, s 197.2(m)(ii).

this is the primary issue of concern, and the rightful focus of judicial consideration in the cases studied below. As a closely related issue, this article considers challenges to teacher professionalism when teachers face obstacles in complying with their duty to ensure schools remain safe and welcoming places for students. We propose that this is a crucial consideration in this conversation and in supporting 2SLGBTQIA+ students.

This article is premised upon the understanding that teachers have a professional duty to create safe and inclusive schools for students of all gender identities and sexual orientations. The teaching profession includes the professional values of equity, inclusion, respect for students and the exercise of professional autonomy to meet the needs of students. In some provinces these values are enshrined in professional standards.¹⁰ Teachers are held to a high standard and draw on a strong history of teacher professionalism and professional autonomy to fulfil their role.

We begin this discussion, in Part One, by considering the landmark Supreme Court of Canada decision in *Hansman v Neufeld*,¹¹ and related jurisprudence, which provide important contextual background for the remainder of the article. The judicial recognition of discrimination faced by the transgender community is a key aspect of these decisions. This context is critical for understanding the importance of protecting teachers' efforts to treat 2SLGBTQIA+ students with dignity and respect. These decisions also demonstrate examples of the challenge to teacher professionalism that emerges when public officials, such as school trustees, make online posts attacking an initiative designed to equip teachers to educate students, in an age-appropriate way, about gender identity and sexual orientation.

In Part Two, we examine case law from New Brunswick and Ontario and argue that parental claims of religious freedom, to either distribute certain materials on school grounds or to demand exemptions from an inclusive curriculum, interfere with teachers' professionalism. We also highlight

¹⁰ Judyth Sachs, "Teacher Professionalism: Why are we still talking about it?" (2016) 22:4 *Teachers and Teaching: Theory and Practice* 413 at 422. Our perspective of what teachers do is informed by the work of Sachs who articulates the following vision of a *mature profession*: "It is mature because it has the confidence to represent itself to others in ways that are trusted, valued and respected. Its members share a common set of values, are guided by ethical practice and have a knowledge base that is robust and can be defended."

In addition, see e.g. BC Teacher's Council, "Professional Standards for BC Educators" (19 June 2019) online (pdf): <gov.bc.ca> [perma.cc/G9V3-9MQU]; Ontario College of Teachers, "The Ethical Standards for the Teaching Profession and The Standards of Practice for the Teaching Profession" online (pdf): <oct.ca> [perma.cc/9UVD-RTE8].

¹¹ *Hansman v Neufeld*, 2023 SCC 14 [*Hansman*].

available tools for governing school board meetings in a climate of anti-2SLGBTQIA+ rhetoric. Two recent Ontario decisions provide guidance in this regard. Ultimately, these decisions should reinforce the confidence of school boards that they have the power to control their own processes and reject or halt presentations with discriminatory content. We argue that school board leadership is necessary, to allow teachers to fulfil their duties as professionals.

In Part Three, we canvass one Ontario case, and recent government initiatives in New Brunswick, Saskatchewan and Alberta that have had, and continue to have, an adverse impact on students and teachers. Much of the public discussion on this topic has focused on the use of student pronouns and teaching about human sexuality or gender identity, but the topics at issue are in fact broader and include student autonomy and privacy, access to relevant health information and an accurate and compassionate description of sexual orientation and gender identity. Saskatchewan's recently adopted law, *The Education (Parents' Bill of Rights) Amendment Act*, not only entitles parents to prohibit teachers from using the preferred names and pronouns of children under the age of 16 at school, but also allows parents to completely opt their children out of lessons dealing with sexual content. We argue that these measures adversely impact teachers' ability and professional responsibility to perform their duties.

We conclude our article with some final thoughts on our discussion of ongoing challenges to teacher professionalism.

II. Part One: Judicial Recognition of Discrimination Faced by the Transgender Community

In May 2023, the Supreme Court of Canada issued its seminal decision in *Hansman v Neufeld*.¹² The decision stemmed from a defamation lawsuit and application under the anti-Strategic Lawsuit Against Public Participation ("anti-SLAPP") legislation in British Columbia.¹³ It was also the first time the Supreme Court of Canada addressed discrimination towards the transgender community.

¹² *Ibid.*

¹³ The term "SLAPP" refers to Strategic Lawsuit Against Public Participation. Some provinces have targeted these lawsuits, which disproportionately suppress free expression on matters of public interest, with legislation that creates a process to screen out these lawsuits at an early stage in the litigation, see *Protection of Public Participation Act*, SBC 2019, c 3 [PPPA].

The underlying facts in *Hansman* involved online and in-person statements made by a public-school trustee and counterstatements to the media by the President of a teachers' union. Barry Neufeld, a Chilliwack School District elected school trustee, launched a barrage of public statements attacking 2SLGBTQIA+ individuals and the use of educational resources designed to increase inclusivity in schools and teach students, in an age-appropriate way, about sexual orientation and gender identity. In his first public statement on these topics, posted on Facebook in October 2017, Neufeld called SOGI 123 (an initiative to guide educators on instruction about sexual orientation and gender identity) a "'weapon of propaganda' that teaches the 'biologically absurd theory' that 'gender is not biologically determined, but is a social construct.'"¹⁴ He lamented that students were "being taught that heterosexual marriage is no longer the norm."¹⁵ Neufeld voiced support for "traditional family values" and heralded countries like Russia and Paraguay, which he claimed, "had the guts to stand up to these radical cultural nihilists."¹⁶ He noted that he was making this post at the risk "'of being labelled a bigoted homophobe.'"¹⁷

Neufeld's post was met with quick and forceful criticism from other public figures, including Glen Hansman, then President of the British Columbia Teachers' Federation ("BCTF").¹⁸ Hansman was contacted by the media for comment and shared his view that Neufeld "should step down or be removed" and described Neufeld's views as "intolerant" and "bigoted."¹⁹ Neufeld continued to make similar public statements, including that using SOGI 123 resources amounted to "gaslighting" and "an attack [on] the foundation of a child's wellbeing which is child abuse."²⁰ The Chilliwack Teachers' Association and BCTF filed a human rights complaint alleging that Neufeld had violated the BC *Human Rights Code* by creating a discriminatory work environment for teachers and publishing statements that are "likely to expose transgender individuals to hatred."²¹

¹⁴ *Hansman*, *supra* note 11 at para 14. See also "This Man is Probably The Worst School Trustee in British Columbia", *PressProgress* (October 16, 2018), online: <pressprogress.ca> [perma.cc/SCP7-CVY9].

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid* at para 4.

¹⁹ *Ibid* at paras 17–18.

²⁰ *Ibid* at para 23.

²¹ *Ibid* at para 28. Neufeld's application to dismiss the human rights complaint was not successful, see *British Columbia Teachers' Association v Neufeld*, 2023 BCSC 1460. The merits are awaiting a decision by the Tribunal.

Over the following months, Neufeld continued making public statements, including criticizing Christian churches of being “slow to stand up against this evil agenda” and claiming that more tolerant churches were infected with “Pink Christianity.”²² Hansman continued to provide comments to the media in response, including labelling Neufeld’s statements “transphobic” and stating that Neufeld was “creating a school environment for [BCTF] members and students that is discriminatory and hateful.”²³ In the lead up to the school board elections in the fall of 2018, Neufeld filed a defamation suit against Hansman, alleging that 11 comments Hansman provided to the media over the course of the preceding year defamed Neufeld.²⁴ Hansman brought an application to dismiss the defamation suit under British Columbia’s newly enacted *Protection of Public Participation Act (PPPA)*.²⁵ The BC Supreme Court granted the application and dismissed the defamation suit.²⁶ The BC Court of Appeal overturned the chambers judge decision and reinstated the action.²⁷ The Supreme Court of Canada granted Hansman leave to appeal.²⁸

The *PPPA* is designed to act as “a mechanism to screen out lawsuits that unduly limit expression on matters of public interest through the identification and pre-trial dismissal of such actions.”²⁹ Much of the Supreme Court of Canada’s decision in *Hansman* addresses the test under the *PPPA* to have an action dismissed on the basis that “the expression relates to a matter of public interest.”³⁰ In this context, the Court, for the first

²² *Ibid* at para 35. See also “This Man is Probably The Worst School Trustee in British Columbia”, *PressProgress* (October 16, 2018), online: <pressprogress.ca> [perma.cc/SCP7-CVY9].

²³ *Ibid* at para. 29.

²⁴ *Ibid* at paras 16, 31–34.

²⁵ *Ibid* at paras 2, 5; *PPPA*, *supra* note 13, s 4.

²⁶ *Neufeld v Hansman*, 2019 BCSC 2028.

²⁷ *Neufeld v Hansman*, 2021 BCCA 222.

²⁸ *Neufeld v Hansman*, 2021 BCCA 222, leave to appeal to SCC granted, 2021 SCC 14. In order to appeal a decision in a civil case to the Supreme Court of Canada, the applicant must seek leave of the Court. The applicant must explain to the Court how the case raises an issue or issues of public importance. In other words, the Court’s permission is required because there is not an automatic right to appeal.

²⁹ *1704604 Ontario Ltd v Pointes Protection Association*, 2020 SCC 22 at para 16. Such lawsuits are often referred to by the acronym SLAPP, which stands for Strategic Lawsuit Against Public Participation.

³⁰ *PPPA*, *supra* note 13, s 4. Côté J wrote a dissent, which differed from the majority in its application of the test under the *PPPA*. Côté J did not comment on discrimination faced by the transgender community, but at para 172 noted, “It may be that Mr. Neufeld’s statements crossed the line that he breached the *Human Rights Code*, R.S.B.C. c. 210, but that is for the British Columbia Human Rights Tribunal to decide following a hearing on the merits of the complaints filed against Mr. Neufeld.” She would have dismissed the application under the *PPPA* as, in her view, with respect to the defamation action Neufeld “deserves to have his day in court” (see *Hansman*, *supra* note 11 at paras 132, 172).

time, addressed discrimination against transgender and non-binary individuals and provided guidance for courts and tribunals across the country on this issue.

The Supreme Court of Canada recognized that the “transgender community is undeniably a marginalized group in Canadian society.”³¹ The Court reviewed the history of discrimination that transgender individuals have faced in Canada, stating:

Indeed, transgender people occupy a unique position of disadvantage in our society, given the long history in psychiatry "of conflating [transgender and other 2SLGBTQ+] identities with mental illness" and even resorting to harmful "conversion therapy" to "resolve" gender dysphoria, and "recondition" the individual to reduce "cross-gender behavior"... As the British Columbia Human Rights Tribunal has recognized, "[u]nlike other groups ..., transgender people often find their very existence the subject of public debate and condemnation" ... They are stereotyped as diseased or confused simply because they identify as transgender....³²

The Court reviewed social science evidence demonstrating the different facets of Canadian society within which transgender people have faced discrimination, including increased risk of violence, disadvantages related to housing, employment, healthcare, and access to justice.³³ The Court affirmed lower court and tribunal decisions which have recognized that “despite some gains, transgender people remain among the most marginalized in our society’... and continue to live their lives facing ‘disadvantage, prejudice, stereotyping, and vulnerability’”³⁴

The Supreme Court of Canada recognized that Hansman was engaged in counter-speech, through which “he sought to counter expression that he and others perceived to undermine the equal worth and dignity of marginalized groups.”³⁵ Consequently, the Court held there was “great public interest” in protecting Hansman’s counter-speech that was intended “to combat discriminatory and harmful expression and to protect transgender youth in schools.”³⁶

This decision has implications for the law beyond the realm of defamation lawsuits and provides guidance to Canadian courts and

³¹ *Hansman*, *supra* note 11 at para 84.

³² *Ibid* at para 85.

³³ *Ibid* at para 86.

³⁴ *Ibid* at para 89, citing *Oger v Whatcott (No. 7)*, 2019 BCHRT 58 at para 62; *CF v Director of Vital Statistics (Alta)*, 2014 ABQB 237 at para 58.

³⁵ *Hansman*, *supra* note 11 at para 91.

³⁶ *Ibid* at para 93.

tribunals when addressing 2SLGBTQIA+ issues. As examined in the following sections of this article, transgender individuals and educators who are seeking to create an inclusive school environment have recently faced a variety of challenges from some community members and provincial governments. These challenges are often couched in discriminatory stereotypes and myths about transgender people.

The Ontario Court of Appeal considered similar public statements in *Volpe v Wong-Tam*.³⁷ This case was argued before the Supreme Court of Canada released the *Hansman* decision.³⁸ Although *Volpe* does not reference *Hansman*, the result is consistent with *Hansman*.³⁹ In *Volpe*, a local newspaper owner wrote a series of articles critical of the Toronto Catholic District School Board's inclusive education policies.⁴⁰ The policies were aimed at redressing bullying of 2SLGBTQIA+ students and included proclaiming Pride month, raising a Pride flag outside the School Board office, and listing "gender identity, gender expression, family status and marital status" as protected characteristics in the School Board's Code of Conduct.⁴¹ In the articles, "Volpe's language was intemperate and often profoundly insulting to the responding trustees and those to whom he referred as the 'LGBT activists' or 'the LGBT.'"⁴² The trustees viewed Volpe's articles as not only harmful to them, but to the students and families they sought to protect.⁴³

Following a public dispute between Volpe and the school trustees, the City of Toronto passed a motion expressing its displeasure with Volpe's newspaper and directing the city manager to inform the City's media vendors that they must sign and comply with the City's Human Rights and Anti-Discrimination Policies.⁴⁴ After signing the declaration, Volpe brought a defamation action that alleged the City of Toronto stopped purchasing advertising in his paper because of defamatory statements made by the school trustees and the city councillor who brought the original motion to Council.⁴⁵

³⁷ *Volpe v Wong-Tam*, 2023 ONCA 680 [Volpe].

³⁸ *Cf ibid*; *Hansman*, *supra* note 11.

³⁹ *Volpe*, *supra* note 37; *Hansman*, *supra* note 11.

⁴⁰ *Ibid* at para 1.

⁴¹ *Ibid* at para 4.

⁴² *Ibid* at para 6.

⁴³ *Ibid* at para 7.

⁴⁴ *Ibid* at para 22.

⁴⁵ *Ibid* at para 23.

The Court of Appeal upheld the motion judge's decision dismissing the defamation action under Ontario's anti-SLAPP provisions.⁴⁶ In reaching this conclusion the court held:

When [Volpe and the newspaper] made statements connecting persons who identify as LGBTQ2S+ with pedophilia and moral depravity, they could not then complain when other parties called them homophobic, and chose not to do business with them on that basis. Appealing to the *bond fide* nature of the larger debate does not immunize specific statements from scrutiny.⁴⁷

The Court of Appeal did not have the benefit of the Supreme Court of Canada's reasons when the case was argued. Yet, the Ontario court reached a similar result as the Court in *Hansman*, recognizing that Volpe could not complain when his discriminatory statements were called homophobic.⁴⁸ The Court of Appeal did not use the term "counter-speech", but the statements at issue in the defamation claim appear to fit this term.⁴⁹

We note one other recent defamation proceeding as an example of the challenges facing the 2SLGBTQIA+ community. In *Rainbow Alliance Dryden v Webster*, the Ontario Superior Court of Justice considered an application to dismiss a defamation action that stemmed from the opposite side of these issues and, subsequently, addressed the merits of the defamation claim.⁵⁰ The plaintiff, Caitlin Hartlen, was a drag performer who participated in an event organized by the co-plaintiff, Rainbow Alliance Dryden.⁵¹ The defendant, Brian Webster, administered a public Facebook page that he marketed as a "media/news company" which was accessible by anyone on the internet, including those who are not Facebook users.⁵² The page was a "platform for Webster's reporting of, and opinions on, various issues."⁵³

Following a prank call to the police alleging the drag event was an effort to "groom children",⁵⁴ and ensuing media coverage of those events, Webster wrote a post on his Facebook page, in which he included a photo that named Hartlen, and stated the following:

⁴⁶ *Ibid* at para 58, 67.

⁴⁷ *Ibid* at para 58.

⁴⁸ *Ibid*.

⁴⁹ See *Volpe v Wong-Tam*, 2023 ONCA 680, leave to appeal to SCC refused (May 2024).

⁵⁰ *Rainbow Alliance Dryden v Webster*, 2023 ONSC 7050; *Rainbow Alliance Dryden v Webster*, 2025 ONSC 1161.

⁵¹ *Ibid* at para 2.

⁵² *Ibid* at para 9.

⁵³ *Ibid*.

⁵⁴ *Ibid* at paras 11–12.

TAXPAYER FUNDED CBC REPORTER JON THOMPSON HAS AN AGENDA TO PROMOTE

ASK YOURSELF WHY THESE PEOPLE NEED TO PERFORM FOR CHILDREN?

GROOMERS. That's the agenda. Just look at the face of the one child in the photo. Tells you all you need to know.

Your tax dollars pay Jon Thompson to promote this stuff.

#DefundCBC.⁵⁵

The post generated a number of comments such as “[i]t’s a mental illness that’s been allowed and enabled for far too long... Fuck off with your bs you fucking pedophiles” and “Can we buy tags to hunt these animals??”⁵⁶ Hartlen and Rainbow Alliance Dryden brought a defamation action against Webster, alleging that Webster’s statements accusing Hartlen and Rainbow Alliance of predatory behavior were defamatory.⁵⁷ Webster sought to dismiss the defamation action under Ontario’s anti-SLAPP provisions.⁵⁸ In considering Webster’s application to dismiss, the Ontario Superior Court of Justice had the benefit of the Supreme Court of Canada’s decision in *Hansman*.⁵⁹

There are two aspects of the decision that are significant with respect to the context of recognizing discrimination against the 2SLGBTQIA+ community. First, the plaintiffs tendered expert evidence to assist the court with understanding the historical and social context for Webster’s “groomers” statement and the stereotypes faced by members of the 2SLGBTQIA+ community.⁶⁰ Based on this evidence, the court found it was reasonable to conclude that the suggestion that drag performers were “groomers” simply because of their sexual or performance identity was defamatory:

The implication is that the drag performers are manipulating children for pedophilic and abusive purposes. The hateful comments accompanying the defamatory post demonstrate that this is how the readers interpreted the expression. Courts have

⁵⁵ *Ibid* at para 15.

⁵⁶ *Ibid* at para 18.

⁵⁷ *Ibid* at paras 2–3.

⁵⁸ *Ibid* at para 1.

⁵⁹ *Ibid* at para 24.

⁶⁰ *Ibid* at para 20.

consistently found that smearing someone as a "pedophile" is likely to cause serious harm to a person's reputation.⁶¹

Second, relying on *Grant v Torstar*, the court noted that in order "[t]o qualify as expression relating to a matter of public interest, the expression must concern an issue 'about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached.'" ⁶² In this context, the court held that "perpetuating such stereotypes and myths about members of the 2SLGBTQI community is not public interest speech"⁶³ and, in dismissing Webster's motion, determined the defamation action should proceed. The court concluded:

Along with rights come responsibilities, especially when one is recognized by a number of individuals or "followers" as a local media source. Not exposing another individual to hatred, contempt or ridicule by making allegations that have no basis in fact, and are founded solely on the fact that the individual is a member of a vulnerable, *Charter*-protected group, is such a responsibility. I simply cannot find any public interest in protecting a harmful trope that associates 2SLGBTQI people with sexual predation against children. On the other hand, there is considerable public interest in allowing individuals who are the victims of such conduct to publicly defend their reputation in a court of law.⁶⁴

In its subsequent decision, addressing the merits of the defamation claim, the Ontario Superior Court of Justice held that Webster's statements, accusing Rainbow Alliance and the individual plaintiff of being "groomers", were defamatory, noting the courts have recognized "falsely labelling someone as a pedophile or a sexual predator or sexual groomer is defamatory".⁶⁵ The court went on to explain that "falsely labelling 2SLGBTQI individuals as 'groomers' cannot be fair comment because perpetuating harmful myths and stereotypes about vulnerable members of society is not a matter of public interest".⁶⁶

These three recent proceedings all address similar circumstances where members of the 2SLGBTQIA+ community were targeted with statements based on stereotypes and discriminatory beliefs. These cases demonstrate, in a troubling way, the level of vitriol and hyperbole that the 2SLGBTQIA+

⁶¹ *Ibid* at para 55.

⁶² *Ibid* at para 43, citing *Grant v Torstar Corp*, 2009 SCC 61 at para 105.

⁶³ *Ibid* at para 47.

⁶⁴ *Ibid* at para 65.

⁶⁵ *Rainbow Alliance Dryden v Webster*, 2025 ONSC 1161 at para 160.

⁶⁶ *Ibid* at para 201.

community is currently facing within some segments of Canadian society. The Supreme Court of Canada's decision in *Hansman* provides important guidance for courts and tribunals across the country on addressing these issues. The *Volpe* and *Rainbow Alliance Dryden* decisions show how lower courts are grappling with these issues and reaching similar results.

Counter-speech was a central concept in both *Hansman* and *Volpe*, although the court in *Volpe* did not use this specific terminology. For teachers, the concept of counter-speech by others in the education sector, including by their union leaders, may be particularly important in defending teachers' professional autonomy, their ability to treat students with dignity and their capacity to respect student privacy. Individual teachers may not want to engage in public debates. It is important that others within the education sector can utilize counter-speech to combat discrimination and allow teachers to focus on their jobs and assist in making schools safe places for students to be themselves.

III. Part Two: "Parental Rights"

In this section, we consider the following case law as being representative of parental challenges to teacher professionalism: *Bonitto v Halifax Regional School Board* ("*Bonitto*"),⁶⁷ and *ET v Hamilton-Wentworth District School Board* ("*ET*").⁶⁸ We argue that the parental claims of religious freedom to either distribute certain materials on school campus, like in *Bonitto*,⁶⁹ or to demand exemptions from an inclusive curriculum, such as in *ET*,⁷⁰ interfere with teachers' professionalism. Specifically, these claims cannot be reconciled with teachers' duties to "provide programs to promote students' intellectual development, human and social development"⁷¹, "respect and value the diversity in their classroom, schools and communities," and "treat students equitably with acceptance, dignity and respect."⁷²

In *Bonitto v Halifax Regional School Board*, a parent whose children attended a public school (grades primary through nine) in Halifax tried to

⁶⁷ *Bonitto v Halifax Regional School Board*, 2015 NSCA 80 [*Bonitto*].

⁶⁸ *ET v Hamilton-Wentworth District School Board*, 2016 ONSC 7313, aff'd 2017 ONCA 893 [*ET ONSC*].

⁶⁹ *Bonitto*, *supra* note 67 at paras 1–2.

⁷⁰ *ET ONSC*, *supra* note 68 at paras 5–9.

⁷¹ *School Regulation*, BC Reg 265/89, s 4.

⁷² BC Teacher's Council, *supra* note 10 at 4.

distribute gospel tracts to students and others on the school's premises during school hours.⁷³ The students, whose ages ranged from four to fifteen, represented various cultures and religions.⁷⁴ As a fundamentalist Christian, Bonitto believed that anyone who does not accept Christ would go to hell, and his literature reflected this belief.⁷⁵ A school board policy, adopted further to legislation, required that the principal approve distribution of materials on school property.⁷⁶ A separate Board Policy stipulated that any religious instruction on school property must take place outside of regular school hours.⁷⁷ The principal declined to approve Bonitto's distribution and instructed him to stop.⁷⁸

Bonitto sued the school board, alleging that it had infringed his freedom of religious expression guaranteed by sections 2(a) and 2(b) of the *Canadian Charter of Rights and Freedoms* ("Charter").⁷⁹ Nova Scotia's Supreme Court rejected Bonitto's claim, and the Court of Appeal affirmed that decision.⁸⁰

In its decision, the appellate court drew on the Supreme Court of Canada's analytical framework in *Doré/Loyola*⁸¹ and *Dunsmuir*⁸² to ascertain the legal validity of the principal's decision. First, the court acknowledged that Bonitto's faith was sincere.⁸³ The principal's decision, examined objectively, impeded Bonitto's attempts to share his faith through the distribution of religious materials.⁸⁴ It was determined that the principal's interference was more than trivial or unsubstantial.⁸⁵ Although dissemination and teaching are components of the free exercise of religion under section 2(a) of the *Charter*, the Court of Appeal had to balance this freedom with the four statutory objectives at play: neutrality on religious

⁷³ *Bonitto*, *supra* note 67 at para 1.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Canadian Charter of Rights and Freedoms*, s2(a)-(b), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. (Section 2(a) of the *Charter* states: "Everyone has the following fundamental freedoms: freedom of . . . religion." Section 2(b) of the *Charter* declares: "Everyone has the following fundamental freedoms: freedom of . . . expression").

⁸⁰ *Bonitto*, *supra* note 67.

⁸¹ *Doré v Barreau du Québec*, 2012 SCC 12; *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12.

⁸² *Dunsmuir v New Brunswick*, 2008 SCC 9. The Court of Appeal noted that the Supreme Court of Canada's approach to a *Charter* review of administrative decisions also drew on a synthesis of the proportionality principle from *R v Oakes*, 1986 CanLII 46 (SCC).

⁸³ *Bonitto*, *supra* note 67 at para 64.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

issues, inclusion in the school community, student safety, and Ministerial approval of the school's program or curriculum.⁸⁶ These objectives were "fully supported by the legislation, the Board's Policies and the evidence".⁸⁷

The implications of this case for teacher professionalism are important. In our view, Bonitto's actions posed a threat to teachers' professional duties and obligations. While carrying out their craft, teachers are expected to promote the statutory objectives identified by the court.⁸⁸ Bonitto's conduct challenged these objectives.

First, teachers must demonstrate neutrality in all things religious, especially in the case of a student body so religiously and culturally diverse.⁸⁹ Bonitto argued that he sought no preferential treatment, acknowledging that proponents of other faiths were welcome to speak just as freely.⁹⁰ The Court of Appeal rejected this argument, stating that this would undermine a basic premise under the *Education Act*, namely messages promoted on school property during school hours "must pertain to the approved scholastic program."⁹¹ As the appellate court ruled:

Mr. Bonitto's message is that non-Christians will burn in a sea of flames for eternity. The Board's witnesses held the view that elementary students, especially non-Christians, hearing this on the steps would entertain an unsettling distraction from their classwork. The message would undermine the "orderly and safe learning environment" and the "positive and inclusive school climate" proclaimed by the preamble to the *Education Act*.⁹²

⁸⁶ *Ibid* at para 70.

⁸⁷ *Ibid*.

⁸⁸ *Ibid*.

⁸⁹ See *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16. The Supreme Court of Canada ruled that an evolving interpretation of freedom of conscience and religion imposes a duty of neutrality on the state. As the Court explained at para 74: "By expressing no preference, the state ensures that it preserves a neutral public space that is free of discrimination and in which true freedom to believe or not to believe is enjoyed by everyone equally, given that everyone is valued equally." The Ontario Court of Appeal has stressed the importance of state neutrality in matters of religion in public schools. (See *Zylberberg v Sudbury Board of Education (Director)* 1988 CanLII 189 (ONCA) and *Canadian Civil Liberties Assn v Ontario (Minister of Education)* 1990 CanLII 6881 (ONCA). See also *SL v Commission scolaire des Chênes*, 2012 SCC 7).

⁹⁰ *Bonitto*, *supra* note 67 at para 85.

⁹¹ *Ibid* at para 87.

⁹² *Ibid* at para 88.

Second, teachers have a duty to ensure that schools are inclusive and accommodate all students.⁹³ Some of the materials that Bonitto sought to hand out “stated that homosexuality and worshipping another God were sins, which would lead to eternal damnation if not repented from”.⁹⁴ Teachers have a duty to encourage respect for students who are gender diverse, of different sexual orientations, and of different or no religious faith.⁹⁵ Bonitto’s proposed literature was a direct affront to the teaching and messaging of inclusion in public schools and might lead those not of his faith to conclude that, on some moral or spiritual level, there was something wrong with them and/or their families.

Third, teachers have an obligation to ensure students’ safety.⁹⁶ The nature of Bonitto’s materials was inconsistent with this obligation. The “Boo Tract” contained the words “they riddled him with bullets.”⁹⁷ The images used included “a cat being sacrificed with a knife, and a human figure wearing a pumpkin on its head carrying a chainsaw with a caption that it wanted a human as a sacrifice”.⁹⁸ The “Stinky Tract” showed “a person being thrown over a cliff and someone celebrating that happening”.⁹⁹ The “Empty Tomb Tract” referred to “muscles being sliced wide open and blood spurting, [while providing] a detailed medical description of the injuries inflicted during crucifixion and the body’s reaction to those injuries...”¹⁰⁰ To state the obvious, the language and images were highly problematic and not age appropriate. The content of Bonitto’s literature was simply not

⁹³ See *Ross v New Brunswick School District No 15*, 1996 CanLII 237 (SCC) at para 42. In the context of a poisoned school environment characterized by anti-Semitic expression and behavior, the Supreme Court of Canada held that “a school board has a duty to maintain a positive school environment for all persons served by it.”

⁹⁴ *Bonitto*, *supra* note 67 at para 10.

⁹⁵ *Ibid* at para 14. As part of its Cross Cultural Understanding and Human Rights in Learning Policy, the School Board had articulated its recognition that “certain groups in our society are treated inequitably because of individual and systemic bases” including sex, gender, sexual orientation and the School Board’s “ongoing responsibility to understand and work toward eliminating all forms of discrimination.”

⁹⁶ *Ibid* at para 68. As the Court of Appeal in *Bonitto* noted, “The preamble to the *Education Act* extols ‘an orderly and safe learning environment’, ‘a positive and inclusive school climate’, and ‘the diverse nature and heritage of society in Nova Scotia within the context of its values and beliefs.’ School boards are duty-bound to provide ‘safe, quality learning environments.’”

⁹⁷ *Ibid* at para 10. Bonitto distributed “religious tracts” or “Bible tracts”, literature which promoted his religious beliefs and was based on the Bible.

⁹⁸ *Ibid*.

⁹⁹ *Ibid*.

¹⁰⁰ *Ibid*.

compatible with teachers' responsibility to promote a safe environment — one that is conducive to learning and harmonious social interactions.

Finally, educators must create an inclusive learning environment, built on respect and equality for all students.¹⁰¹ This is one of the hallmarks of the profession, and actions like Bonitto's undermine this ethical duty of teachers to embrace the inherent dignity of every learner.

The 2017 decision of the Ontario Court of Appeal in *ET v Hamilton-Wentworth District School Board* demonstrates how a parental objection to an inclusive sexual education curriculum challenges teachers' professionalism.¹⁰² ET, a member of the Greek Orthodox Church and father of two elementary school children, maintained that his religious convictions mandated he protect his children from what he considered "false teachings" in the public-school curriculum.¹⁰³ Among other claims, the father opposed the discussion or portrayal of homosexual/bisexual conduct in relationships and/or transgender identity as natural and healthy.¹⁰⁴ ET claimed that his religious beliefs compelled him to ensure that his children learned about marriage and human sexuality from a biblical perspective and according to the teaching of the Greek Orthodox Church.¹⁰⁵

ET asked the school board to provide him with information in advance related to the specific curriculum content being taught to his children.¹⁰⁶ He also requested permission to withdraw his children from classes, lessons or activities that conflicted with his faith.¹⁰⁷ The board offered to exempt ET's children from "Healthy Living", which was a discrete part of the school program and involved education on human development and sexual health.¹⁰⁸ However, other aspects of school lessons and programming

¹⁰¹ See *Education Act*, SNS 2018, c 1, Schedule A, at s 41. The *Act* outlines a number of legal duties teachers must perform. Two particularly relevant to our discussion are the duty to "(a) respect the rights of students" and "(m) maintain an attitude of concern for the dignity and welfare of each student and encourage in each student an attitude of concern for the dignity and welfare of others and a respect for religion, morality, truth, justice, love of country, humanity, equality, industry, temperance and all other virtues." Although there is no formal statutory language in the legislation, this suggests that teachers must serve as role models for their students.

¹⁰² *ET v Hamilton-Wentworth District School Board*, 2017 ONCA 893 [ET].

¹⁰³ *Ibid* at paras 1–2.

¹⁰⁴ *Ibid* at para 2.

¹⁰⁵ *Ibid* at para 13.

¹⁰⁶ *Ibid* at para 14.

¹⁰⁷ *Ibid* at para 36.

¹⁰⁸ *Ibid* at para 3.

promoted a positive and inclusive environment that accepts all students.¹⁰⁹ The board advised it was “neither practical nor possible” to provide prior notification any time one of the items on his list would be discussed.¹¹⁰

ET brought an application to court, claiming that he had been denied parental authority over his children’s education and that his *Charter* protected freedom of religion was violated by the Board’s refusal to grant the accommodation he sought.¹¹¹ He also asserted a claim of religious discrimination under Ontario’s *Human Rights Code* and the *Education Act*.¹¹² ET sought a declaration of parental authority, maintaining there exists a “long-standing common law principle that parents and guardians have ultimate authority over their children, including their education.”¹¹³ In the Superior Court, Justice Reid denied this declaratory relief, concluding that the declaration could not be justified by the facts and it served no useful purpose.¹¹⁴

Justice Reid concluded that the school board had proportionately balanced ET’s freedom of religion with the applicable statutory objectives and impaired the father’s freedom of religion as minimally as possible in the circumstances.¹¹⁵ ET had failed to prove on a balance of probabilities that the administrative decision of the principal and the board was unreasonable.¹¹⁶ Justice Reid declined to hear the father’s arguments under Ontario’s *Human Rights Code*, concluding that the court did not have jurisdiction to consider the father’s claim for breach of duty to accommodate under the *Code*.¹¹⁷

The Ontario Court of Appeal dismissed ET’s appeal.¹¹⁸ The appellate court recognized the sincerity of the father’s religious belief but ruled that this by itself did not amount to a *Charter* breach.¹¹⁹ Although six years had elapsed since ET’s initial request and the hearing, he did not provide any evidence that the board had interfered with his or his children’s right to freedom of religion:

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.* at para 4.

¹¹² *Human Rights Code*, RSO 1990 c H 19; *Education Act*, RSO 1990, c E2.

¹¹³ *ET ONSC*, *supra* note 68 at para 14.

¹¹⁴ *Ibid.* at para 120.

¹¹⁵ *Ibid.* at paras 103–105.

¹¹⁶ *Ibid.* at para 105.

¹¹⁷ Reid J noted that the court did not have jurisdiction to grant a remedy based on a breach of the *Code* “unless the claim is brought as an adjunct to another cause of action.” (See *ibid.* at para 113).

¹¹⁸ *Ibid.* at para 120.

¹¹⁹ *ET*, *supra* note 102 at para 26.

ET's claim rests upon his general and pervasive dissatisfaction with the nature of the Board's curriculum with respect to matters of equity, non-discrimination and inclusiveness. However, he has not proved a single instance where his children were coerced to do something that was contrary to his or their religious beliefs or where they were denied the right to manifest or observe their religion as they wished. Nor has he provided any evidence that his right to inculcate his children with his own religious views has been curtailed or infringed.¹²⁰

In *Bonitto v Halifax Regional School Board*, teachers faced an indirect assault on their profession via the distribution of inappropriate literature demonizing non-Christians.¹²¹ The *ET* case represents a more direct attack on teacher autonomy. ET's request for his children to be exempted from topics he found morally offensive, along with advance notice of what was being taught, challenged the core duties expected of teachers in secular public schools. Like *Bonitto*, this case raises similar considerations, including the professional obligation of teachers to advance the goals of neutrality, inclusion, student safety and the values of an inclusive society.

A careful analysis of Justice Reid's decision from the Superior Court reveals how ET's actions represented a serious threat to professional autonomy. In the proportionate balancing test, Justice Reid considered the statutory objectives under Ontario's *Education Act* (including the board requirement of respecting the principles set out in the *Charter* and the *Code*) and the relevant policies to ascertain if the school board could justify denying the father's request for advance notice and exemption.¹²²

From a teacher perspective, the obligation to promote inclusive school environments has both legal and ethical underpinnings. As Justice Reid noted: "The *Education Act* recognizes the protections afforded by the *Charter* and the *Code*, but also links student achievement and well-being to its policies which require inclusivity and equity. In turn, inclusivity and equity are responses to concerns about racism, religious intolerance, homophobia and gender-based violence in schools."¹²³

Even if the *Charter*, human rights codes, provincial schooling laws and policies did not exist, teachers would still come under an ethical obligation

¹²⁰ *Ibid* at para 27. The court noted the onus was on ET "to proffer evidence that, from an objective standpoint, the instruction and activities to which his children are in fact exposed interferes with his ability to" "shield his children from hypothetical 'false teachings'." *Ibid* at para 33.

¹²¹ *Bonitto*, *supra* note 67.

¹²² *ET ONSC*, *supra* note 68 at paras 73–74.

¹²³ *Ibid* at para 90.

to respect the personhood of their students and treat them as human beings worthy of kindness, respect and dignity. Ensuring that gender diverse students are not subject to discriminatory treatment is simply the right thing to do. ET's actions posed a real threat to the very legal, ethical and institutional architecture that governs the lives of teachers. ET's request for an accommodation ran counter to the values of equity and safety that all teachers must uphold. This is especially true for gender diverse students, who are particularly vulnerable and face greater risks when it comes to marginalization, aggression, physical and sexual assault, and suicidality.¹²⁴ One could argue that there is an increased need for care and commitment on the part of teachers to ensure that the most vulnerable students are not further relegated to the margins by parental actions, such as ET's, which are harmful to their development.

In *ET*, the school board promised to work towards ensuring that curriculum delivery in all subject areas was congruent with the principles and practices of equity as they related to sexual orientation and gender expression/identity.¹²⁵ Justice Reid noted that the board's policy would honour this commitment by guaranteeing that:

- staff had access to a wide variety of teaching and learning materials free from bias;
- staff who chose to use learning materials with themes, topics or characters reflecting the diversity of sexual orientations would be supported;
- best practices and age/developmentally appropriate teaching and learning strategies would be employed to cover the topic of sexual orientation; and

¹²⁴ Trans people, including children, are at a greater risk for suicide than members of the general population and gay, lesbian, and bisexual people. McNeil et al. state that "rates of suicidal ideation and attempts in the trans population would appear to be substantially higher than the general population (e.g., 9.2%) These rates would also appear to be considerably higher than for other marginalized groups. For example, when compared to lesbian, gay, and bisexual (LGB) people, trans people were reported to be '162% more likely to have ever seriously considered committing suicide.'" See Jay McNeil, Sonja J Ellis & Fiona JR Eccles, "Suicide in Trans Populations: A Systematic Review of Prevalence and Correlates" (2017) 4:3 *Psychology of Sexual Orientation and Gender Diversity* 341 at 341-42.

See also Jay A Irwin et al, "Correlates of Suicide Ideation Among LGBT Nebraskans" (2014) 61(8) *J Homosexuality* 1172 at 1181.

¹²⁵ *ET ONSC*, *supra* note 68 at para 49.

- facilities would be spaces where lesbian, gay, bisexual and transgender students can learn without fear of harassment.¹²⁶

In essence, this framework guarantees that teachers have the professional freedom to select the best methods and materials for a supportive and safe space that is conducive to learning. This educational scaffolding serves as a bulwark against parental challenges, which might otherwise undermine the well-being and best interests of students. ET's lack of approval for the approach to teaching human sexuality and gender identity was no justification for his attempts to exempt his children from an integral part of the school curriculum. The father could not "insist that a non-denominational public-school board restructure its inclusive and integrated program, designed to meet its statutory objective of ensuring a respectful and accepting climate for all children, so that he can ensure that his own children are not exposed to any views that he does not accept."¹²⁷

Had the school board caved to ET's demands, this preferential treatment would have compromised the boards' and teachers' need to demonstrate religious neutrality in a very diverse learning community. As Justice Reid of the Superior Court observed, the board:

... must respect religious differences and attempt not to interfere with the beliefs or practices of any religious group while recognizing that there are 103 schools within its jurisdiction... within the student body, there are many races, sexual orientations, genders, religions and religious denominations represented, and it is reasonable to assume that there are also many students with no faith background.¹²⁸

Finally, schoolteachers cannot escape their duties as role models who inculcate values to their students. In *Ross v New Brunswick School District 15*,¹²⁹ the Supreme Court of Canada (SCC) stated:

A school is a communication centre for a whole range of values and aspirations of society. In large part, it defines the values that transcend society through the educational medium. The school is an arena for the exchange of ideas and must,

¹²⁶ *Ibid.*

¹²⁷ *ET*, *supra* note 102 at para 40.

¹²⁸ *ET ONSC*, *supra* note 68 at para 88.

¹²⁹ *Ross v New Brunswick School District No 15*, 1996 CanLII 237 (SCC).

therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate.¹³⁰

The SCC went on to explain: "... a school board has a duty to maintain a positive school environment for all persons served by it."¹³¹ In the *ET* case, the student body included gender diverse students.¹³² This means that teachers had to do everything in their power to protect and to celebrate the most vulnerable among them. The father's actions interfered with teachers' commitment to the values of equality, equity, and inclusion.

On a practical level, *ET*'s request posed daunting challenges for teachers. Teachers would have had to interpret the meaning of the father's lengthy and complicated list of objectionable topics¹³³ and then ascertain whether the curriculum would or would not have engaged those subject areas. Moreover, teachers were mandated to teach from an integrated curriculum based on equity and inclusivity.¹³⁴ The list of objectionable topics *ET* provided was comprehensive. As Justice Reid noted: "It would be extremely difficult for teachers to be sufficiently familiar with the variety of concerns raised by parents for individual students so as to advise in advance of their mention in lessons."¹³⁵ It is not hard to imagine the logistical obstacles of addressing the father's request, and comparable requests, under the scenario envisaged by *ET*. Unduly onerous and disruptive are words that come to mind. Imposing this burden on teachers would amount to a bureaucratic and unnecessary interference with their professional autonomy.

¹³⁰ *Ibid* at para 42. The Court also declared, "Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions. . . By their conduct, teachers as 'medium' must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system." (See *ibid* at paras 43-44.)

¹³¹ *Ibid*.

¹³² *ET*, *supra* note 102 at para 11.

¹³³ His list included: values neutral education, occultic principles and practices, environmental worship, instruction in sex education, discussion or portrayals of sexual conduct that we determine to be unnatural/unhealthy, discussions or portrayals of homosexual/bisexual conduct and relationships and/or transgenderism (as natural, healthy), teaching about or the provision of birth-control drugs and devices (without parental consent), teaching that abortion is an acceptable method of birth control and that life does not begin at conception, encouraging the acceptance of infanticide or euthanasia, and providing a false sense of security with regard to the effectiveness of condoms in preventing the spread of sexually transmitted diseases. (See *ET ONSC*, *supra* note 68 at para 66).

¹³⁴ *ET*, *supra* note 102 at para 35.

¹³⁵ *ET ONSC*, *supra* note 68 at para 96.

A. School Board Tools for Responding to the Challenges

After examining various challenges teachers and schools are facing from parents, it is useful to note that school boards can proactively address these issues when they arise. This was demonstrated above, when the principal in *Bonitto* declined to approve distribution of the father's materials on school grounds.¹³⁶ Other litigation in Ontario has demonstrated that school boards can use various tools at their disposal to respond to confrontations by parents and other members of the public or individual school board members.¹³⁷ This is particularly significant when school board meetings, which are open to the public, become a venue for members of the public to air misinformed or discriminatory views about transgender individuals. Below, we review three recent decisions on this issue.

In *Gillies v Bluewater District School Board*, the Ontario Divisional Court upheld the School Board's decision to limit an anti-SOGI presentation by a community member.¹³⁸ The community member requested to deliver an oral presentation at a public school board meeting and, after the request was denied, sought judicial review of the board's decision.¹³⁹ Although the application for judicial review was dismissed due to delay, the court also provided reasons on the merits of the application.¹⁴⁰

The applicant had described her presentation as being about flying the Pride flag at schools during Pride month, alleging "this is a special right not afforded to other interest groups and therefore discriminatory."¹⁴¹ The court, however, found that the presentation was "an attack on the 'Trans movement', whose 'agenda' is purportedly encouraged by academics, and advances the view that 'transgender children don't exist'...".¹⁴² Although the School Board refused the applicant's request to make an oral presentation at a public school board meeting, the Board received a written copy of the

¹³⁶ *Bonitto*, *supra* note 67 at para 1.

¹³⁷ See e.g. *Gillies v Bluewater District School Board*, 2023 ONSC 165 [*Gillies*]; see e.g. *Burjoski v Waterloo Region District School Board*, 2023 ONSC 6506 [*Burjoski*]; see e.g. *Del Grande v Toronto Catholic District School Board*, 2024 ONCA 769, leave to the SCC denied [2025] SCCA No 532.

¹³⁸ *Gilles*, *supra* note 137 at paras 33–36.

¹³⁹ *Ibid* at para 2.

¹⁴⁰ *Ibid* at paras 18–19.

¹⁴¹ *Ibid* at para 20.

¹⁴² *Ibid* at para 21.

presentation.¹⁴³ The School Board had also heard a similar presentation by the applicant in the previous year.¹⁴⁴

The court reviewed provisions of Ontario's *Education Act*, which "creates a duty on every school board to 'promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any... sex, sexual orientation, gender identity, gender expression...'," and to develop and maintain policies to promote that goal."¹⁴⁵ The School Board also had its own Human Rights Policy.¹⁴⁶

The court noted that although the School Board's by-laws set out a process to apply to make a presentation to the Board, there was no right to make a presentation, nor did the Board have an obligation to approve any particular application.¹⁴⁷ Furthermore, the court held that the by-laws did not require the Board to provide written reasons for refusing to hear a delegation.¹⁴⁸ As a result, the court determined that, even though the Board provided reasons, it was not required to do so.¹⁴⁹

In concluding that the reasons the School Board provided were "sufficient, and entirely reasonable"¹⁵⁰ the court held:

...It is clear that to permit the applicant's proposed presentation to be publicly aired at a Board meeting would run contrary to the laws, by-laws and policies regarding inclusiveness that bind it, and that permission was being denied for that reason.

To understand the rationale for the Board's decision, it is only necessary to imagine a trans student in attendance in the audience at the Board meeting where the applicant was making the presentation, and hearing it publicly declared that they do not, in fact, exist, but are instead the construct of a "harmful transgender ideology". How could that meeting possibly be described as being part of a "positive school climate that is inclusive and accepting of all pupils, including pupils of any ... sex, sexual orientation, gender identity, [or] gender expression...?"¹⁵¹

A similar issue was considered by the Ontario Divisional Court in *Burjoski v Waterloo Region District School Board*.¹⁵² Carolyn Burjoski was a retired elementary school teacher who registered to speak at a school board

¹⁴³ *Ibid* at paras 37, 39.

¹⁴⁴ *Ibid* at para 29.

¹⁴⁵ *Ibid* at para 25, citing *Education Act*, RSO 1990, c E.2, s 169.1.

¹⁴⁶ *Gilles*, *supra* note 137 at paras 25.

¹⁴⁷ *Ibid* at para 28.

¹⁴⁸ *Ibid*.

¹⁴⁹ *Ibid* at para 29.

¹⁵⁰ *Ibid* at para 36.

¹⁵¹ *Ibid* at paras 33–34.

¹⁵² *Burjoski*, *supra* note 137.

meeting on the topic of “Library Review”.¹⁵³ In her request form, Burjoski indicated that she wanted to address “transparency regarding the library and classroom teacher’s collections culling project,” and her “concern regarding Board Policy 1235 Section 4 which states that we teachers must not disclose a student’s transgender status to their parents.”¹⁵⁴ The School Board granted her request to address the library review only.¹⁵⁵

At the beginning of the School Board meeting, the chair advised attendees that presentations were confined to a maximum of 10 minutes and to the issue the delegate was registered to address. The chair also advised that any discourteous language or statements that might contravene human rights legislation would not be tolerated.¹⁵⁶ Soon after Burjoski began her remarks, she digressed from the scope of the issue approved for presentation and began to address hormone blockers and medical care for transgender youth.¹⁵⁷ She was cautioned by the chair and when she persisted in her remarks the chair stopped her presentation because he considered that it could violate human rights legislation and School Board policies for delegations.¹⁵⁸ One of the trustees challenged the chair’s decision.¹⁵⁹ The Board took a vote and sustained the chair’s decision to end the presentation.¹⁶⁰

Burjoski sought judicial review of the Board’s decision, alleging the Board’s decision was unreasonable, breached procedural fairness and was biased.¹⁶¹ The court upheld the Board’s decision as reasonable, noting:

In making its decision, the WRDSB sought to achieve, and did achieve, a reasonable balance between Burjoski’s *Charter* right to free expression and the objectives of its Bylaws, its Equity and Inclusion Policy, the *Education Act*. It prioritized the maintenance of a safe and inclusive school environment for its community members and was in accordance with the requirements of reasonableness as set out in *Vavilov*.¹⁶²

The court held that there was no breach of procedural fairness, noting that Burjoski “was given more than one opportunity” to speak to the topic

¹⁵³ *Ibid* at paras 1, 7–8.

¹⁵⁴ *Ibid* at paras 7–8.

¹⁵⁵ *Ibid* at para 11.

¹⁵⁶ *Ibid* at para 12.

¹⁵⁷ *Ibid* at paras 14–15.

¹⁵⁸ *Ibid* at paras 15–17.

¹⁵⁹ *Ibid* at para 18.

¹⁶⁰ *Ibid* at paras 15–18.

¹⁶¹ *Ibid* at para 22.

¹⁶² *Ibid* at para 33.

that was within scope of the approved presentation, “but declined to do so even after she was reminded of its scope.”¹⁶³ The court also held that there was no basis for any finding of reasonable apprehension of bias and the fact that the chair had a reason for voting a certain way, namely his stated concern that Burjoski’s comments were “transphobic” and she had “questioned the right to exist of trans people”, “is not the same as being biased before the vote is cast.”¹⁶⁴

In both of the above cases, the applicants sought to make statements that questioned the right of transgender people to exist. As the Supreme Court of Canada noted in *Hansman*, this reflects a unique form of discrimination faced by transgender individuals as “transgender people often find their very existence the subject of public debate and condemnation.”¹⁶⁵ As a result, it is crucial for school boards to be aware of the significance of these types of statements and to have tools available to address and limit the potential harm to students, educators, and other members of the education community when attempts are made to air these views.¹⁶⁶

In *Del Grande v Toronto Catholic District School Board*, the Ontario Court of Appeal upheld the Divisional Court’s ruling that a school board acted within its authority when it sanctioned a school trustee for using “extreme and derogatory rhetoric” when he flippantly equated gender identity and gender expression to cannibalism, rape and bestiality.¹⁶⁷ In considering the appropriate balancing of the school trustee’s *Charter* right to free speech and freedom of religion with the School Board’s statutory mandate, the Court of Appeal concluded that the Divisional Court’s reasoning accorded with Canadian jurisprudence “on the balance that should be struck between freedom of speech and [protecting] young LGBTQ+ persons from demeaning and hateful rhetoric in schools, school boards, and post-secondary institutions”.¹⁶⁸

¹⁶³ *Ibid* at para 39.

¹⁶⁴ *Ibid* at paras 41–43. We note that Burjoski has also filed a defamation claim against Waterloo Region District School Board and the School Board chairperson. The School Board and Chairperson brought an application to dismiss the defamation claim. That application was unsuccessful at the Ontario Superior Court of Justice but is currently on appeal and scheduled to be heard by the Ontario Court of Appeal in September 2024.

¹⁶⁵ *Hansman*, *supra* note 11 at para 85, citing *Oger v Whatcott (No 7)*, 2019 BCHRT 58 at para 61.

¹⁶⁶ Harm to educators could include the harm of a discriminatory workplace or poisoned work environment and also lack of respect or harm to the profession itself.

¹⁶⁷ *Del Grande v Toronto Catholic District School Board*, 2024 ONCA 769 at paras 3, 39, 41.

¹⁶⁸ *Ibid* at para 44.

Ultimately, these court decisions should reinforce the confidence of school boards that they have the power to control their own processes and reject applications to hear presentations, or to stop presentations, with discriminatory content, and sanction fellow trustee members when necessary. This is particularly important because school board meetings are held in an open forum, often with students, parents and school board staff present. It is necessary to control school board meeting processes to ensure these meetings are not used as public platforms for discriminatory statements. This can assist in protecting teachers' professional duties to ensure schools are inclusive for all students. This is similar to the use of counter-speech, reviewed above, by other leaders within the education sector, as teachers may not be in a position to engage in these public debates.

School board leadership is necessary to allow teachers to accomplish their pedagogical goals and fulfil their duties as professionals. It is important that these leaders utilize the tools at their disposal to halt discriminatory statements and allow teachers to focus on their jobs and assist in making schools safe places for students to be themselves. If school boards do not proactively prepare to moderate their meetings, considering potential presentations and comments by the anti-SOGI lobby, they risk failing to include all students and make them feel safe within the school community. This may cause teachers to have additional obstacles in their professional journey.

IV. Part Three: Threats from Government

In Parts One and Two, we examined challenges to teacher professionalism from a school trustee, parents and members of the public.¹⁶⁹ These attacks by individuals on teacher professionalism have been addressed thanks, in part, to an alert judiciary that is sensitive to the rights of vulnerable students. More recently, policies (Ontario, New Brunswick), legislation (Saskatchewan) and legislation awaiting proclamation (Alberta) targeting sexual education curriculum and gender inclusive schools have emerged in a concerted, serious and aggressive manner.¹⁷⁰ These government actions are pernicious in both their nature and scope. Provincial

¹⁶⁹ In some cases, opposition to SOGI materials is related to stated religious beliefs, but not in all instances.

¹⁷⁰ *Department of Education*, *supra* note 2; *Amended Education Act*, *supra* note 2; *Primary Care Alberta*, *supra* note 2; *ETFO*, *supra* note 2.

governments, who have jurisdiction over K-12 education in Canada and thus mandate curriculum, have the power and means to shape the curriculum in a manner that is far beyond the impact individuals can have.¹⁷¹ These governmental actions have come in different forms including curricular changes, policy changes and the adoption of a parental bill of rights in Saskatchewan.¹⁷² Consequently, they pose a risk as to what teachers can instruct and how they interact with their students.

Our discussion focuses on governmental action from four Canadian provincial governments, namely, Ontario, New Brunswick, Saskatchewan and Alberta. In Ontario, we consider *ETFO et al. v Her Majesty the Queen*, a decision about provincial control of the sex education curriculum.¹⁷³ We contend that the government's actions leading to this case posed a direct threat to teacher professionalism by forcing teachers to use an outdated curriculum that no longer served the best interests of all Kindergarten to Grade 8 students in Ontario schools. On the policy and legislative side, governments in New Brunswick, Saskatchewan and Alberta have all recently introduced draconian measures that infringe upon the autonomy of teachers. We describe these measures and argue that they compromise teachers' capacity to treat students of all sexual orientations and gender identity with respect and dignity and to teach all students about human sexuality (including sexual orientation and gender diversity) in age-appropriate and professional ways.

We propose that recent anti-2SLGBTQIA+ policies and legislation reflect the hallmarks of a moral panic.¹⁷⁴ Against a backdrop of moral panic, privileging a discourse of "parental rights",¹⁷⁵ and demonizing sexual orientation and gender expression other than straight and cisgender identity, has significant implications for how teachers do their jobs. We argue that undue deference to "parental rights" represents a serious challenge to teacher professionalism and autonomy because it prevents

¹⁷¹ This jurisdiction is anchored in s 93 of the *Constitution Act, 1867*. 30 & 31 Victoria, c. 3 (U.K.)

¹⁷² *Department of Education*, *supra* note 2; *Amended Education Act*, *supra* note 2; *Primary Care Alberta*, *supra* note 2; *ETFO*, *supra* note 2.

¹⁷³ *ETFO*, *supra* note 2.

¹⁷⁴ Valerie Walkerdine, Helen Lucey & June Melody, *Growing Up Girl: Psychosocial Explorations of Gender and Class* (Basingstoke: Palgrave Press, 2001) describe moral panic as public anxieties that identify certain behaviors as deviant and a menace to the social order. Also, see *Catherine Lee*, *supra* note 4 (explains this moral panic is gripping the Western world, including Canada).

¹⁷⁵ It is notable that the "parental rights" movement includes many individuals who are not parents of school aged children. This is demonstrated in some of the cases reviewed below, such as instances where members of the public seek to make a presentation to a school board.

teachers from creating a safe and welcoming school environment and providing students with accurate and relevant facts and information needed to make informed and healthy decisions. The implications for students are significant. For example, requiring parental consent for the use of one's affirmed name and pronoun means that teachers are unable to respect students' personal autonomy and privacy.¹⁷⁶

A. Curricular Changes in Ontario and Ensuing Litigation

In 2019, the Ontario Superior Court issued its decision of *Elementary Teachers' Federation of Ontario v Ontario (Minister of Education)*.¹⁷⁷ By way of background, in 2018, Ontario's Minister of Education enforced a directive that required all elementary public school teachers for Grades 1 through 8 to teach a 2010 sex education curriculum for the 2018-2019 school year.¹⁷⁸ The 2010 Curriculum had been in place from 2010 to 2015 and was replaced with a new sex education curriculum in 2015, which was used until 2018.¹⁷⁹ The Minister's directive was an interim measure to allow for further consultations and the creation of a new sex education curriculum for elementary public schools for the next school year.¹⁸⁰ The 2010 Curriculum omitted topics that were covered in the 2015 Curriculum, in particular: consent, the specific names for body parts, gender identity and sexual orientation, online behaviour and cyberbullying and sexually transmitted infections.¹⁸¹ As the directive was only to elementary school teachers, high school teachers continued to deliver the 2015 Curriculum to students in Grades 9 to 12.¹⁸²

When the 2015 Curriculum was introduced, some elected officials made public statements supporting the change in the sex education curriculum and the directive requiring teachers to follow it. For example, then Minister of Education, Liz Sandals stated:

We are updating the curriculum to ensure the safety and health of our students. Schools and parents both play an essential and complementary role in supporting

¹⁷⁶ *Amended Education Act*, *supra* note 2, s 197.2(n).

¹⁷⁷ *ETFO*, *supra* note 2.

¹⁷⁸ *Ibid* at para 3.

¹⁷⁹ *Ibid* at paras 2-4.

¹⁸⁰ *Ibid* at para 3.

¹⁸¹ *Ibid* at para 4.

¹⁸² *Ibid* at para 5.

student learning – including learning about human development and sexual health. We are listening to parents. That is why we are working with education partners to develop a number of resources for parents and educators about the curriculum and about issues impacting today's children and youth.¹⁸³

Conversely, in 2018, when the Ford provincial government reverted to the 2010 Curriculum, the Ministry created a website called ForTheParents.ca to solicit feedback from parents.¹⁸⁴ The site included a reporting line where parents could comment on the curriculum being taught.¹⁸⁵ The Ministry stated that any complaints regarding teachers would be collected and shared with the Ontario College of Teachers, the disciplinary body governing teachers.¹⁸⁶

The Elementary Teachers Federation of Ontario (ETFO) and Cindy Gangaram, an elementary public school teacher, sought judicial review of the Minister's directive.¹⁸⁷ Becky McFarlane, a queer mother, and her Grade 6 daughter L.M., joined by the Canadian Civil Liberties Association (CCLA) brought another judicial review application.¹⁸⁸ The Ontario Superior Court chose to hear both applications for judicial review together, granting intervenor status to three organisations: the Grand Council of Treaty 3, Justice for Children and Youth, and the Canadian HIV/AIDS Legal Network and HIV & AIDS Legal Clinic Ontario.¹⁸⁹ The court's analysis focused on one key question: did the Minister's directive requiring schools to teach the 2010 Curriculum, and the events surrounding that decision, violate the *Charter* rights of teachers, students, and/or parents?¹⁹⁰

A detailed review of the *Charter* claims in the *ETFO* case is beyond the scope of this article. We consider briefly ETFO's argument that the Minister of Education violated the province's elementary school teachers' *Charter* right to freedom of expression by restricting their capacity to decide what to

¹⁸³ "Ontario Releases Updated Health & Physical Education Curriculum, Parent Resources", *Ontario Newsroom* (February 23, 2015), online: <news.ontario.ca> [perma.cc/4ST6-VY5K].

¹⁸⁴ *ETFO*, *supra* note 2 at paras 3–7.

¹⁸⁵ *Ibid* at para 7.

¹⁸⁶ *Ibid*.

¹⁸⁷ *Ibid* at para 8.

¹⁸⁸ *Ibid* at para 19.

¹⁸⁹ *Ibid* at paras 24, 31, 36.

¹⁹⁰ *Ibid* at para 2. The *Charter* rights at stake were those protected by ss 2(b), 7, and 15, which guarantee respectively "freedom of thought, belief, opinion and expression", and "the right to life, liberty and security of the person", and "the right to equality before and under the law and equal protection and benefit of the law."

teach in their classrooms.¹⁹¹ Our purpose is to highlight the challenge to teacher professionalism that this case epitomizes.

The court held that teacher free speech had not been violated.¹⁹² First, the Minister conceded that, provided teachers met the learning objectives in the 2010 Curriculum, they were entitled to address topics that went beyond those explicitly set out in the 2010 Curriculum to meet the needs of a given class or student.¹⁹³ In other words, teachers could draw upon the 2015 Curriculum in their teaching and classrooms. Second, Ontario's *Education Act*, *Human Rights Code* and relevant *Ministry Policy/Program Memoranda* all required teachers and school environments to be inclusive, tolerant and to respect diversity.¹⁹⁴ Third, the 2010 Curriculum imposed certain requirements on teachers when implementing the curriculum.¹⁹⁵ Specifically, they had to be "inclusive and reflect the diversity of the student population ... regardless of ancestry, culture, ethnicity, sex, physical or intellectual ability, race religion, gender identity, sexual orientation, socio-economic status or other similar factors ..."¹⁹⁶ Finally, there was no provision in the 2010 Curriculum that stated elementary school teachers had to refrain from "addressing the topics of consent, use of proper names to describe body parts, gender identity and sexual orientation, online behaviour and cyberbullying, and sexually transmitted diseases or infections."¹⁹⁷

Although the court determined that teachers' free expression rights had not been infringed in these circumstances, we argue that the government action is a challenge to teacher professionalism for various reasons. First, the government replaced an updated and progressive curriculum (2015) with an older and more conservative one (2010). Legitimizing the outdated 2010 Curriculum with the formal stamp of the state, when educators oppose it and know it does not address the needs of its most vulnerable and powerless citizens, shows in its design and/or impact, a lack of respect for teacher professionalism.

¹⁹¹ *Ibid* at para 12, 14.

¹⁹² *Ibid* at para 132.

¹⁹³ *Ibid* at para 123(a).

¹⁹⁴ *Ibid* at para 123(b).

¹⁹⁵ *Ibid* at para 123(c).

¹⁹⁶ *Ibid*.

¹⁹⁷ *Ibid* at para 123(d).

Second, as professionals, teachers must exercise some degree of autonomous judgment over what is taught and how it gets taught.¹⁹⁸ In *ETFO*, the court explicitly acknowledged this.¹⁹⁹ The court's confirmation that Ontario teachers could draw on the 2015 Curriculum, at their discretion, when teaching about health and sexuality appears to acknowledge that the 2010 Curriculum by itself was inadequate, incomplete, and did not serve the interests of all students, parents or the larger educational community.²⁰⁰ The court concluded, "Teachers have a constitutional right to free expression under s. 2(b), but this does not translate into a right to teach a particular curriculum."²⁰¹ However, the Ontario government's return to an outdated curriculum for elementary students – that explicitly removed the state's imprimatur on the teaching of several critically important subjects – is an indirect attack on teacher professionalism. It placed significantly more emphasis on the *what* and much less emphasis on the *how*, essentially disregarding that teachers would use age-appropriate strategies for teaching these important topics to students. In addition, potentially placing an onus on individual teachers to justify to parents why they were supplementing their lessons with the unsanctioned 2015 Curriculum shows a lack of regard for teacher professionalism.

Third, in its public messaging to defend the 2010 Curriculum, the government used strong language to attack the 2015 Curriculum and, by extension, the educators who sought to use it. The Ontario government looked to justify its actions with support from a segment of the population, which considered the 2015 Curriculum too liberal, age inappropriate, and ideological. In a press release prior to the litigation, the Premier's attack on teachers and their profession could not have been more direct: "We will not tolerate anybody using our children as pawns for grandstanding and political games. And make no mistake: if we find somebody failing to do their job, we will act."²⁰² The Ontario government's highlighting of the

¹⁹⁸ See Paul T Clarke, *Understanding Curricular Control: Rights Conflicts, Public Education, and the Charter* (London, ON: The Althouse Press, 2013) at 54.

¹⁹⁹ *ETFO*, *supra* note 2 at paras 117(a), 118. The court stated that, "A teacher is the expert in the classroom who decides how the curriculum will be taught. Various legislative requirements stipulate that a teacher must act in a way that promotes tolerance and inclusion and respects diversity." (See *ibid* at para 117(b)).

²⁰⁰ *Ibid* at para 122.

²⁰¹ *Ibid* at para 160.

²⁰² *Ibid* at para 102.

process to make complaints about teachers, as part of this campaign, appears to be aimed at undermining trust in teachers.

Fourth, all three intervenors in the case underlined the fraught nature and inadequacy of the 2010 Curriculum and the effect on the communities they represented.²⁰³ Although the court did not specifically rely on the arguments raised by the intervenors in its analysis, the issues raised, including harm to Indigenous students, reflect a deep concern with the inadequacy of the 2010 Curriculum.²⁰⁴ Finally, as professionals, teachers must have the capacity to teach a curriculum that is reflective of the reality and needs of their students. Students have interests independent of their parents. Gender diverse students want to feel safe and secure in their school environment and to see themselves reflected in the curricular materials. This respects their sexual orientation and gender identity, which goes to the core of their personhood. Teachers exercise their professionalism by respecting students' personal privacy and autonomy.

B. Policy and Legislative Changes in New Brunswick, Saskatchewan and Alberta

More recently, governments in New Brunswick, Saskatchewan, and Alberta, through policy and legislative changes, have shown a blatant disregard for teachers' professionalism – especially regarding teachers' interactions with gender diverse students and lessons about human sexuality and gender diversity in the classroom.²⁰⁵ We briefly review these changes and then offer a critique of their problematic nature.

In April of 2023, New Brunswick's Education Minister, Bill Hogan, began a review of Policy 713, the provincial government's education sector policy on sexual orientation and gender identity.²⁰⁶ The Policy sets "minimum requirements for school districts and public schools to create a safe, welcoming, inclusive, and affirming school environment for all students, families, and allies who identify or are perceived as

²⁰³ *Ibid* at paras 24–39.

²⁰⁴ See e.g. *ibid* at paras 28–30.

²⁰⁵ *Department of Education*, *supra* note 2; *Amended Education Act*, *supra* note 2; *Primary Care Alberta*, *supra* note 2; *ETFO*, *supra* note 2.

²⁰⁶ The Canadian Press, "New Brunswick reviewing policy on sexual orientation and gender identity in schools", *Canadian Press* (9 May 2023), online: <winnipegfreepress.com> [perma.cc/DX7W-FD4T].

LGBTQI2S+.”²⁰⁷ This government review led to the crafting of a new policy, which now requires that students under 16 obtain parental consent before teachers can call them by their “chosen first name and/or pronoun(s)” while at school.²⁰⁸

The Canadian Civil Liberties Association filed an application for judicial review of the changes to Policy 713, claiming the revised policy violates students’ privacy rights, human rights and *Charter* rights, specifically citing students’ *Charter* rights to liberty (section 7), equality (section 15), and freedom of expression (subsection 2(b))²⁰⁹ because the policy removes students’ power to choose pronouns fundamental to their identity, discriminates against them and limits gender expression.²¹⁰

In Saskatchewan, the provincial government first adopted a similar policy and then incorporated it into the province’s *Education Act*.²¹¹ The new provisions require students under the age of 16 to secure the consent of a parent or guardian to have their teachers employ their “gender-related preferred name or gender identity”²¹² while at school. When the policy was introduced, UR Pride, a non-profit housed at the University of Regina, filed a lawsuit challenging the constitutionality of the policy.²¹³ The applicants argued the policy violated sections 7 and 15 of the *Charter*.²¹⁴

The applicants obtained an interlocutory injunction from Saskatchewan’s Court of King’s Bench, halting implementation of the former policy until the court had the chance to conduct a full hearing to determine the policy’s constitutionality.²¹⁵ After granting UR Pride standing

²⁰⁷ *Department of Education, supra* note 2.

²⁰⁸ *Ibid.*

²⁰⁹ *Canadian Civil Liberties v The Province of New Brunswick (Minister of Education and Early Childhood Development)*, Notice of Application (Court File No. FM-76-23), filed September 6, 2023, online: <courtsnb-coursnb.ca/> [perma.cc/ZBJ9-BQ2Q].

²¹⁰ Hadeel Ibrahim, “N.B. gender-identity lawsuit attracts ‘unusual’ number of interveners”, *CBC News* (December 14, 2023), online: <cbc.ca> [perma.cc/F344-STPU].

²¹¹ The policy was first introduced as the “Use of Preferred First Name and Pronouns by Students” and subsequently reintroduced as Bill 137, which amended ss 197.1 & 197.2 of the *Education Act*, 1995 c. E-0.2.

²¹² *Amended Education Act, supra* note 2, s 197.2(n).

²¹³ *UR Pride v Government of Saskatchewan*, 2023 SKKB 204 at paras 11, 34.

²¹⁴ *Ibid* at para 11.

²¹⁵ *Ibid* at paras 3, 132.

to bring the lawsuit,²¹⁶ the court employed the test²¹⁷ to ascertain whether granting an injunction was appropriate in the circumstances. First, the court determined that, on the merits, there was a serious issue to be tried.²¹⁸ Next, the court determined the injunction application met the second step of the test:

On the whole of the evidence, I am satisfied that those individuals affected by this Policy, youth under the age of 16 who are unable to have their name, pronouns, gender diversity, or gender identity, observed in the school will suffer irreparable harm.²¹⁹

Third, the court held that the public interest identified by the government, of ensuring parental involvement with their children who are seeking to engage gender-identity in school, was outweighed by the harm that gender diverse students would suffer.²²⁰ In granting the injunction, the court held:

...the public interest in recognizing the importance of the governmental Policy is outweighed by the public interest of not exposing that minority of students to exposure to the potentially irreparable harm and mental health difficulty of being unable to find expression for their gender identity. The Government's expression of the public interest is reversible. UR Pride's expression of these students' public interest is, potentially, irreversible while possibly attracting irreparable harm.²²¹

Less than a month later, the Saskatchewan government enacted *The Education (Parents' Bill of Rights) Amendment Act, 2023*, which came into force on October 20, 2023.²²² Under the new legislation, if obtaining consent is

²¹⁶ *Ibid* at para 60. The Saskatchewan government argued unsuccessfully that UR Pride had no public interest standing to bring the case to court. In rejecting this, the court noted: "I am satisfied that UR Pride is to be accorded public interest standing to advance this litigation. Indeed, if not this organization there is no other prospect put forward who could engage in the complexity of this matter and who could mount a legitimate challenge to the questioned governmental action."

²¹⁷ *Ibid* at para 69. The court referred to the Supreme Court of Canada's decision in *RJR-MacDonald v Canada (Attorney General)*, 1994 CanLII 117 (SCC) while setting forth the elements of the test to be applied: First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits [pp 334].

²¹⁸ *Ibid* at para 72.

²¹⁹ *Ibid* at para 98.

²²⁰ *Ibid* at para 128, 132.

²²¹ *Ibid* at para 132.

²²² *Amended Education Act*, *supra* note 2.

reasonably expected to result in “physical, mental or emotional harm” to the student, the principal will direct the student to “appropriate professionals” who are to “support and assist the pupil in developing a plan to address the pupil’s request with the pupil’s parent or guardian.”²²³ There is no provision to address circumstances when such a plan cannot be successfully developed. The law also sets out notification and opt-out requirements for parents and guardians with respect to lessons about sexual education. If “sexual health content” is going to be presented to students in the school, a parent or guardian has the right to notice of the dates and subject matter of the sexual health content and is free to withdraw their child (in the absence of any explanation) from the lesson.²²⁴

Significantly, the Saskatchewan government invoked s. 33 of the *Charter*,²²⁵ the Notwithstanding Clause, and s. 52 of the *Saskatchewan Human Rights Code*, in an attempt exempt the legislation from application of the *Charter* and human rights legislation. The use of this clause suggests the Saskatchewan government was conceding that its legislation violated the rights of children. In February 2024, the Saskatchewan Court of King’s Bench held that the UR Pride lawsuit launched in 2023 could proceed with respect to the claims based on alleged violations of sections 7 and 15 of the *Charter*.²²⁶ The Saskatchewan government had argued that the court no longer had jurisdiction to hear the case, claiming that the proceeding should be halted because the matter was effectively moot.²²⁷ From the government’s

²²³ *Ibid*, s. 197.4(2).

²²⁴ *Ibid*, s 197.2(m).

²²⁵ Section 33 of the *Charter* states:

(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Section 52 of *The Saskatchewan Human Rights Code*, 2018 declares:

Every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless:

(a) that law falls within an exemption provided by this Act; or

(b) that law is expressly declared by an Act to operate notwithstanding this Act.

²²⁶ *UR Pride Centre for Sexuality and Gender Diversity v Government of Saskatchewan*, 2024 SKKB 23 [UR Pride].

²²⁷ *Ibid* at para 2.

perspective, the new legislation supplanted the previous policy and, with its invocation of section 33, was immune from *Charter* scrutiny.²²⁸

In rejecting this position, the court ruled, “the use of the Notwithstanding Clause does not serve to oust the jurisdiction of the court to determine, and provide declaratory relief, as to whether or not the subject legislation is in breach of those sections of the *Charter* including the invocation of the Notwithstanding Clause.”²²⁹ The court allowed the applicants to amend their claim to file a new argument based on an alleged violation of section 12 of the *Charter*, which protects against cruel and unusual treatment or punishment.²³⁰ The Saskatchewan Court of Appeal substantially upheld the Court of King’s Bench decision, concluding:

A s. 33 declaration does not repeal the *Charter* provisions in question or change their content. The *Charter* remains in effect. The judge did not err in holding that the declaration contained in s. 197.4 of the *Education Act*, made under s. 33 of the *Charter*, did not oust the jurisdiction of the Court of King’s Bench to determine whether that provision limits the rights of individuals under ss. 7 and 15(1) of the *Charter*.²³¹

In Alberta, Premier Danielle Smith recently indicated that her province would make significant changes to school policy, practices and education sector legislation in the fall of 2024, which will go even further than the changes in New Brunswick and Saskatchewan.²³² Alberta will soon require parental consent for students 15 and under who want to change their names or pronouns at school.²³³ Premier Smith has stated that students 16 and 17 will not need consent, but their parents must be notified if a change in name or pronoun at school takes place.²³⁴ Dr. Kristopher Wells characterized Smith’s changes as “the most draconian” to be ever introduced in Canada, declaring: “It is a full-on attack against trans and 2SLGBTQ+ communities.

²²⁸ *Ibid* at para 139.

²²⁹ *Ibid* at para 147.

²³⁰ The government of Saskatchewan is appealing the Court of King’s Bench decision, which means that the proceedings are on hold. See Adam Hunter, “Pronoun case adjourned as province applies for leave to appeal judge’s decision allowing challenge”, *CBC News* (26 February 2024), online: <cbc.ca> [perma.cc/6L66-LHD2].

²³¹ *Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity*, 2025 SKCA 74 at para. 7. In September 2025 the parties indicated they are seeking leave to the Supreme Court of Canada.

²³² Janet French, “Alberta premier says legislation on gender policies for children, youth coming this fall”, *CBC News* (1 February 2024), online: <cbc.ca> [perma.cc/88H4-4NNW].

²³³ *Primary Care Alberta*, *supra* note 2.

²³⁴ “Alberta to require parental consent for name, pronoun changes at school”, *Montreal Gazette* (31 January 2024), online: <montrealgazette.com> [perma.cc/WC9B-VZUU].

It is not only immoral, it is illegal . . .”²³⁵ Wells noted that, “there is no evidence or research to support any of these recommendations. This is ideological warfare.”²³⁶

We argue that these recent policy, proposed policy and legislative changes in New Brunswick, Saskatchewan and Alberta represent a significant interference with teachers’ ability to do their jobs on two fronts. First, they prevent teachers from valuing and honoring all students, and notably gender diverse students, in a manner that upholds the highest professional, ethical, legal standards and ideals of the teaching profession. Second, these changes force educators to deprive students of current, relevant, and important information about human sexuality and gender identity/expression that they require to make informed and healthy choices about themselves and how they engage with others. This is inherently anti-intellectual, in the sense that it unduly limits conversation, curiosity and learning, and undermines the best interests of students. Reactionary policy and law cannot be reconciled with the role of the teacher as an educator, one who informs, enlightens, and provides students with facts, accurate information, evidence, and an understanding of what it means to be fully human, as students age and mature as sexual beings with diverse gender identities.

C. Undermining Teachers’ Ability to Value and Honour Gender Diverse Students

Requiring students under the age of 16 to obtain parental consent before using a different name or pronoun has significant implications for how teachers fulfil their professional obligations. This means disrespecting the students’ express wishes on how they would like to be addressed in regular interactions with their teacher while at school. This is not an official name change, hormone surgery or the use of hormone blockers. This is a simple and straightforward request to use a student’s stated name and pronoun while attending school.

Teachers should be courteous to all students in terms of how they address them. When William asks their teacher to call them “Wil” or “Billy”, or go by their middle name, nobody bats an eyelash. When Peter requests

²³⁵ Matthew Black, “Alberta unveils changes to parental consent rules, transgender sports”, *Edmonton Journal* (31 January 2024), online: <edmontonjournal.com> [perma.cc/83QQ-EL5P].

²³⁶ *Ibid.*

that their teacher address them as “Patricia” while at school, the same courtesy should be extended. This lack of respect is even more concerning when we consider the apparent concession, through the use of the Notwithstanding Clause, from the Saskatchewan government that these new policies and Saskatchewan legislation violate the *Charter* rights of gender diverse students.²³⁷

Teachers want to respect the human rights of all their students. Most assuredly, they are not in the business of intentionally harming their students. Yet, these policies and legislation have this effect. Let us consider the following scenario. A gender diverse student in Saskatchewan approaches a teacher and asks them to use their affirmed name and pronoun. The teacher responds by saying that the law mandates that the student must first obtain parental consent before this happens. Out of fear, or believing it is not yet the appropriate time, the student decides not to share this information with their parent or guardian. If the teacher continues to use the student’s previous name and pronoun in interactions with the student, they knowingly misgender the student.

Alternatively, the student reluctantly agrees to the teacher’s direction and approaches their parents even though they are not ready for this conversation. The parental reaction is unknown: it may be supportive, neutral, or hostile. The teacher effectively outs the student to the parent against the student’s wishes and might expose them to serious harm from parents who are not ready, are not supportive or worse. The risk of a student suffering negative repercussions is a serious one when it arises. These are neither trivial nor inconsequential actions that the teacher has taken to ensure that they complied with the new law. It is evident that the students who will be most at risk from the negative familial implications of this law are the students whose families are not supportive, and therefore the most marginalized of these students.²³⁸

²³⁷ For a thorough discussion and critique of the Saskatchewan legislation’s consent provision, and how it unjustifiably violates the rights of equality, security of the person, and expression of gender diverse students, see Paul T Clarke & Michele Sorensen, “Saskatchewan’s *Parents’ Bill of Rights*: Parental Entitlement Undermining the Interests and Rights of Gender Diverse Students” (2024) 33:1 *Education & LJ* 141.

²³⁸ For a detailed examination of the competing perspectives in this regard, see Paul T Clarke & Michele Sorensen, “Saskatchewan’s *Parents’ Bill of Rights*: Parental Entitlement Undermining the Interests and Rights of Gender Diverse Students” (2024) 33:1 *Education & LJ* 141. The authors discuss the rights and

The harm stemming from the teacher's actions for gender diverse students is real, serious and direct. In *Hansman v Neufeld*,²³⁹ the Supreme Court of Canada recently described the discrimination transgender people face in the following terms:

Transgender people have faced discrimination in many facets of Canadian society. Statistics Canada has concluded that they are at increased risk of violence, and report higher rates of poor mental health, suicidal ideation, and substance abuse as a means to cope with abuse or violence they have experienced... . Studies have concluded that they are disadvantaged relative to the general public in housing, employment, and healthcare... . And despite encountering a higher incidence of justiciable legal problems, studies have also found that transgender people have traditionally faced greater access to justice barriers than the broader population, in part due to a lack of explicit human rights protections...²⁴⁰

when school policies deny youth the ability to use their chosen names and pronouns in the absence of parental or guardian consent. In *UR Pride v Government of Saskatchewan*, the court drew on expert evidence that demonstrated this denial constitutes a form of identity invalidation, causing psychological harm with grievous consequences.²⁴¹

Teachers should never harm their students by imposing an indignity upon them. However, these governmental initiatives are forcing teachers to compromise the very dignity, self-respect and safety of gender diverse students. This is a grave fetter on teacher professionalism, and a black mark on inclusive, progressive education. Sadly, the new policies and law will erode the trust that teachers need to establish healthy, strong and respectful relationships with their students. If a gender diverse student senses they can no longer approach a formerly trusted teacher to request that their affirmed name and pronouns be used, it seems likely that they may lose faith in school as a safe place. This inevitably will further intensify the student's isolation, marginalization, and may well lead to identity invalidation. The negative consequences of broken trust are significant.

interests of four principal actors: parents, children, the state, and teachers. They conclude that it is in the best interests of gender diverse children under 16 that they should be entitled to have their affirmed name and gender identity respected at school without first securing parental consent.

²³⁹ *Hansman*, *supra* note 11.

²⁴⁰ *Ibid* at para 86.

²⁴¹ *UR Pride*, *supra* note 226 at paras 74–77. The court referenced the evidence of Dr. Travis Salway at para 75 of the decision. See also related work such as: Travis Salway et al, "A Systematic Review of the Prevalence of Lifetime Experience with 'Conversion' Practices Among Sexual and Gender Minority Populations" (2023) 18:10 PLOS ONE 1.

As professionals and citizens, teachers are expected to obey the law. The actions of the Saskatchewan government have placed some teachers in an ethically fraught situation. Forcing teachers to obey a law that some perceive to be unjust, and that may conflict with teachers' professional duties and standards, has caused those teachers to potentially risk their jobs and face public harassment in order to protect their students' safety.

In November 2023, several Regina-based educators mounted an online petition, describing the Saskatchewan government's law as transphobic and a violation of *Charter* rights.²⁴² The educators called on school boards not to follow it, while claiming their letter was a message of solidarity to transgender youth.²⁴³ Alex Schmidt, an elementary school teacher based in Regina, signed the petition.²⁴⁴ Afraid of the consequences, many teachers refused to use their real names and signed the petition anonymously. Schmidt used her real name stating, "I was less afraid of the consequences of signing my name than the consequences of not signing it."²⁴⁵ Concerned about the harm the law is causing trans students, Schmidt stated: "In Canada, rates of self-harm and suicide is much higher among youth who are trans – we should never go along with laws and movements that are going to perpetuate them. I just knew that, if there was the potential for harm, I couldn't be complicit."²⁴⁶ Although Schmidt has not been disciplined for speaking out publicly against the government's new law, she has been subject to anonymous criticism:

When I signed the petition, I didn't really think that strangers would seek me out; maybe that was naive. I received an anonymous letter that said I was harmful and divisive and a bad teacher. Other messages said I was a groomer and a pedophile and that I should lose my job. Some called me a coward, which was funny, because a lot of that feedback was anonymous.²⁴⁷

When asked about what Schmidt would want Canadian politicians, like Saskatchewan's Premier Scott Moe, to understand about the impact of the new legislation, she stated: "Mostly, I wish politicians would allow teachers

²⁴² Jeremy Simes, "Dozens of Sask. teachers sign petition calling for schools to not follow province's pronoun law", *CBC News* (12 November 2023), online: <cbc.ca> [perma.cc/3DN5-2FG6].

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ Katie Underwood, "I couldn't be complicit": Why one Saskatchewan teacher is protesting the province's pronoun law", *Maclean's* (8 January 2024), online: <macleans.ca> [perma.cc/5SVH-BVQY].

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

to do their jobs.... If he wants to see what's happening, Scott Moe can come and join me in my classroom anytime."²⁴⁸ As Schmidt noted, teachers want the freedom to do their jobs. This includes working to make schools safe and inclusive spaces for gender diverse students. As she stated, teachers are "not telling kids which gender they should be, or telling them to be trans by teaching them about trans identities."²⁴⁹

D. Interfering with Good Pedagogy

The requirement that schools in Saskatchewan must now notify parents two weeks in advance if they are teaching "sexual content" and allow parents to opt their children out of these lessons is another challenge to professionalism.²⁵⁰ Teachers are hired to educate students, to give them information and analysis that relate to a variety of topics including sexuality and gender expression. Teachers also must inculcate values such as respect, inclusion, and a celebration of difference. A legislative fiat, which now tells students that this important material and opportunity to learn may no longer be available because some parents do not want it, disregards teachers' professional obligations to create an inclusive school environment and to help students learn about the world around them.

Furthermore, the notice and opt-out requirements demonize and politicize sexual health education and the treatment of gender diverse students. Privileging parental rights undermines the interests and rights of these students. Framing education on these topics as *optional* education is problematic. If a parent chooses to opt their child out of a class on sexual orientation or gender diversity for religious reasons, this reinforces the continued invisibility, harm and identity invalidation of gender diverse students. Regardless of parents' personal beliefs, all students should have the opportunity to learn about those who are different from them, while recognizing that we all share a common humanity.

In *Chamberlain v Surrey School District No. 36*, a case addressing a school board's failure to approve children's books depicting same sex parented families as supplemental resources, the Supreme Court of Canada rejected the cognitive dissonance argument, which maintains that children should not be exposed to information and ideas that their parents disagree

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ *Amended Education Act, supra* note 2, s 197.2(m)(ii).

with.²⁵¹ A majority of the Court held that some cognitive dissonance is “neither avoidable nor noxious” and is rather “part of living in a diverse society. It is also a part of growing up. Through such experiences, children come to realize that not all of their values are shared by others.”²⁵² The Court ruled that exposing children to some cognitive dissonance is arguably necessary to teach about tolerance.²⁵³ This does not mean abandoning one’s principles or personal convictions.²⁵⁴ As the majority explained:

The belief that others are entitled to equal respect depends, not on the belief that their values are right, but on the belief that they have a claim to equal respect regardless of whether they are right. Learning about tolerance is therefore learning that other people’s entitlement to respect from us does not depend on whether their views accord with our own. Children cannot learn this unless they are exposed to views that differ from those they are taught at home.²⁵⁵

A comprehensive sexual education program enhances health and well-being and is not associated with increased participation in sexual behavior.²⁵⁶ Delivering these programs in schools is especially important because:

...schools are in a unique position to provide children, adolescents, and young adults with the knowledge, understanding, and skills required for them to make and act upon decisions that promote sexual health throughout their lives. Teachers are well-positioned to provide sexual health education because they are seen as trusted sources of information and often serve as role models, advocates, and mentors.²⁵⁷

The Saskatchewan notice and opt out provisions prevent teachers from using an integrated and holistic curriculum to share education on human sexuality and health with all students.²⁵⁸ This is especially troubling since students who want to access this education may well be denied this opportunity because their parents oppose the very idea of any sexual health

²⁵¹ *Chamberlain v Surrey School District No 36*, 2002 SCC 86.

²⁵² *Ibid* at para 65.

²⁵³ *Ibid* at para 33.

²⁵⁴ *Ibid* at para 66.

²⁵⁵ *Ibid*.

²⁵⁶ See Saskatchewan Prevention Institute (“SPI”), “Health Education for Educators” (2025), online: <skprevention.ca> [perma.cc/G6UE-RKWS]. SPI was founded in 1980 as a provincial, non-profit organization dedicated to primary prevention efforts to reduce the occurrence of disabling conditions in children. As an evidence-based organization, SPU provides education, training, and capacity building across its program areas.

²⁵⁷ *Ibid*.

²⁵⁸ *Ibid*.

education. The Saskatchewan government also issued a “temporary directive” that banned third-party educators from presenting on sexual health education.²⁵⁹ As another manifestation of constraining teachers’ program delivery, this means that teachers can no longer access invaluable resources to provide the best education possible to students.

The reasons for providing sexual health education in schools and using knowledgeable third parties to assist with this education, are diverse. Some have noted that consent-based education lowers rates for sexualized violence.²⁶⁰ Before the ban, organizations like the Saskatoon Sexual Health Centre worked with teachers in the classroom to provide age-appropriate education.²⁶¹ As described by a representative of the Centre, “lessons are age-appropriate and curriculum-adjacent, and start with a focus on consent, boundary violations and healthy relationships. As students age, lessons can involve menstruation, birth control methods, reproduction and how to prevent sexually-transmitted disease or pregnancy.”²⁶²

In sum, the collective efforts by the governments of New Brunswick, Saskatchewan and Alberta to micromanage and unduly interfere with teachers’ instruction, and their efforts to provide students with an inclusive school environment, are an unjustified and brazen undermining of the teaching profession.

V. Conclusion

A climate of moral panic helps explain the opposition by some individuals and provincial governments to inclusive school environments and the responsible and professional teaching of sexual orientation and gender identity in Canadian schools. Gender theorist and philosopher Judith Butler has studied this panic (which they call the “phantasm” of gender) and the “anti-gender ideology movement” that undergirds it.²⁶³ They observe that gender, in some places in the world, has become a question of “extraordinary alarm”:

In Russia, [gender] has been called a threat to national security, while the Vatican has said it is a threat to both civilization and to “man” itself. In conservative Evangelical

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ Judith Butler, *Who's Afraid of Gender* (Toronto: Knopf Canada, 2024) at 4.

and Catholic communities throughout the world, “gender” is taken as code for a political agenda that seeks not only to destroy the traditional family but also to prohibit any reference to “mother” and “father” in favor of a genderless future. On the other hand, in recent US campaigns to keep “gender” out of the classrooms, “gender” is treated as code for pedophilia or a form of indoctrination that teaches young children how to masturbate or become gay.²⁶⁴

Butler’s response to the “anti-gender ideology movement” is to demask “their ruse through more finely honed analytical skills, to track their strategies and prove them wrong.”²⁶⁵ Equally important, they claim the “task is to help produce a world in which we can move and breathe and love without fear of violence, with the radical and unrealistic hope in a world no longer driven by moral sadism cloaked as morality.”²⁶⁶ Sadly, Canada has not escaped the phantasm of gender that Butler decries. On September 20, 2023, those opposed to gender diversity in education organized protests in different Canadian towns and cities.²⁶⁷ Claiming to defend parental rights and protect children, some participants in the event labelled 2SLGBTQAI+ counter-protesters as “groomers”, “pedophiles” and “child abusers.”²⁶⁸ Others maintained they wanted to shield children from “indoctrination and sexualization.”²⁶⁹ *The Walrus* reported that these individuals claim drag shows and sexual orientation and gender identity curricula are being used to indoctrinate children and groom them for abuse.²⁷⁰

Canadian teachers are entrusted with a crucial task in our society. They educate children about the world around them with the best facts and evidence, based on current science and research, while inviting students to critically examine the information presented to them. Teachers create a safe and inclusive environment for students to undertake this learning and model cooperation and kindness for their students. They draw on a strong history of teacher professionalism and professional autonomy to fulfil this role. Held to a high standard, teachers work with a captive audience who

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid* at 28.

²⁶⁶ *Ibid.*

²⁶⁷ These individuals titled their protests the “1 Million March 4 Children”, however there is no evidence that this many individuals participated in these events. See Corinne Mason & Leah Hamilton, “How the ‘parental rights’ movement gave rise to the 1 Million March 4 Children”, *The Conversation* (20 September 2023), online: <theconversation.com>.

²⁶⁸ *Ibid.*

²⁶⁹ Michelle Cyca, ““Parents rights” rhetoric is rooted in radical conspiracy theories”, *The Walrus* (11 October 2023), online: <thewalrus.ca>.

²⁷⁰ *Ibid.*

must be in school by virtue of our compulsory education laws. Children who are younger, less sophisticated, and more vulnerable can be swayed easily by adults who are in positions of trust, authority, responsibility and power. Consequently, teachers must always use their status as professionals to promote the best interests of their students and never to exploit that pedagogical relationship for personal or trivial reasons.

Our perspective of what teachers do is informed by the work of Sachs who articulates the following vision of a *mature profession*: "It is mature because it has the confidence to represent itself to others in ways that are trusted, valued and respected. Its members share a common set of values, are guided by ethical practice and have a knowledge base that is robust and can be defended."²⁷¹ Furthermore, professionalism demands self-discipline on the part of the teacher because it is not simply a license to do what one wants. A commitment to competence, curiosity, an ethic of care, compassion, and critical thinking, which always necessitates a respect for self and others, is the hallmark of that bounded professionalism.

Teachers and school boards must recognize the importance of safe and inclusive schools for students. As the Supreme Court of Canada has now recognized, transgender individuals are "among the most marginalized in our society."²⁷² We also know that for transgender students "anti-trans bullying leads to higher rates of absenteeism and poorer educational outcomes, which then has ripple effects for their health and future prospects."²⁷³ This reality facing transgender students is worrying, and it is extremely unfortunate that some of this bullying comes from adults. School boards have been compelled to confront these issues on school grounds and in school board meetings. As reviewed above, there are a variety of tools available to school boards to assist them in supporting teachers' work to create and maintain safe and inclusive schools. It is reassuring that many school boards are taking on this work.

However, the positive work of teachers and school boards stands in sharp contrast to provincial government policies and legislation in certain provinces. Use of the Notwithstanding Clause in Saskatchewan's *Parents'*

²⁷¹ Judyth Sachs, "Teacher Professionalism: Why Are We Still Talking About It?" (2016) 22:4 *Teachers & Teaching: Theory & Practice* 413 at 422.

²⁷² *Hansman*, *supra* note 11 at para 89, citing *Oger v Whatcott* (No. 7), 2019 BCHRT 58 at para 62.

²⁷³ *Oger v Whatcott* (No. 7), 2019 BCHRT 58 at para 62, citing Christophe Cornu, "Preventing and addressing homophobic and transphobic bullying in education; A human-rights based approach using the United Nations Convention on the Rights of the Child" (2016) *Journal of LGBT Youth* 13:1-2, 6-17 at 7-8.

Bill of Rights can be seen as an admission that these provisions violate children's rights. Although not the primary focus of concern given the issues at stake, we have argued that teacher professionalism should be part of this discussion. Teachers need professional autonomy to do their jobs and support students. It is imperative that students feel safe to be themselves at school, ask their teachers questions, and share their thoughts and feelings. Policies and legislated provisions that interfere with this dynamic undermine the student/teacher relationship, founded on trust and respect, which is fundamental to learning, and to the fulfilment of teachers' duties as educators.