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Section 11.1 of the *Alberta Human Rights Act*: EXPECTATIONS & PRACTICE

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This research highlights the secular nature of claims made under Section 11.1 of the Alberta Human Rights Act in light of evidence which suggests teachers have exercised self-censorship by altering or removing classroom materials for fear of religious based-complaint.

LEGISLATION

Section 11.1 of the Alberta Human Rights Act:

“A board as defined in the School Act shall provide notice to a parent or guardian of a student where courses of study, educational programs or instructional materials, or instruction or exercises, prescribed under that Act include subject-matter that deals primarily and explicitly with religion, human sexuality or sexual orientation.”

- » Parents or guardians have the right to then request their child be excluded from that portion of study.
- » Failure to provide notice exposes teachers to the risk of having a complaint filed against them with the Alberta Human Rights Commission.

ISSUES

1. There exists widespread public opposition to the legislation.

Opposition to the law has taken three primary forms:

- » fear of unintended consequences of the law, such as self-censorship by teachers (Gereluk & Farrell, 2014; Gereluk, 2013; Wallace, 2012);
- » criticisms of the breadth of the law's potential application; and
- » opposition due to the potential legal difficulties surrounding the enforcement of the law (Sheldon Chumir Foundation, 2011).

2. What could be considered controversial under Section 11.1 is quite broad.

In 2004, the Supreme Court of Canada defined freedom of religion to “consist[] of the freedom to undertake practices and harbour beliefs... which an individual demonstrates he or she sincerely believes as a

function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma” (Syndicat Northcrest v. Amselem, 2004, p. 553).

Under this definition parents could object to virtually any curricular aspect on freedom of religion grounds.

3. Section 11.1 threatens to undermine the diverse education guaranteed by the School Act and Supreme Court.

“The school is an arena for the exchange of ideas and must... be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate” (Ross v. New Brunswick School District, p. 6).

“The reason children are entitled to an education is that a healthy democracy and economy require their educated contribution” (Moore v. British Columbia, para. 5).

PRACTICE

There have been three instances where a complaint has been filed under Section 11.1.

In 2012, two parents in Morinville filed separate complaints against the Greater St. Albert Catholic Regional Division No. 29 (Dafoe, 2012).

- » There are no secular schools of any kind in Morvinville (Hammer, 2011)
- » Parents argued that this created a two-tiered system where non-Catholic children were inherently discriminated against and had to be “indoctrinated” into the Catholic faith (Dafoe, 2012).
- » Complaints were referred back to the school board by the Alberta Human Rights Commission.

In 2014, an Edmonton mother and daughter complained about the presentation of sexual education classes in a mandatory course by a Christian, anti-abortion, abstinence-only education group in a secular public school. Notice was not provided as to the content of the classes (Simons, 2014).

- » Alberta Human Rights Commission is currently reviewing this complaint.

IMPLICATIONS

It would appear that fears of religious-based censorship in the classrooms has not yet come to pass, and that the impact of Section 11.1 is benign.

However, these formal complaints are not indicative of the legislation's total effect; there are still teachers practicing self-censorship in their classrooms (Gereluk & Farrell, 2014; Wallace, 2012).

The use of Section 11.1 to secure secular classrooms thus far could be used to defend it as valuable legislation which protects parents' right to a say in their child's education, but this does not negate the negative consequences of teachers' self-censorship in the classroom.

The secular defenses raised under it in both Morinville and Edmonton were either not adequately addressed by the Human Rights Commission, or could have been addressed through pre-existing legislative channels that do not circumscribe the education of students through educator's fear of complaint and self-censorship.

Section 11.1 is problematic; its ineffectiveness is highlighted by the climate of fear some teachers encounter, the absence of the required notice prior to the three complaints filed, and the limited efficacy of the complaint process outlined by the legislation.

Though any on-going censorship may be attributed to individual teachers, schools, or boards, the fact that such censorship is spurred on by Section 11.1 undermines the state's legitimate role in providing a diverse educational experience for all citizens.



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