Legally Speaking:

Bill 24: Student Rights vs Parental Rights

Submitted by: Anna Loparco, Partner, Dentons Canada LLP

Bill 24, the NDP government's legislation to amend the *School Act*, makes it illegal for publicly-funded schools to inform parents if their child joins a Gay Straight Alliance ("GSA"): **http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=024&legl=29&session=3**.

The *School Act* was amended by Bill 24 in several ways, including, to:

- require the immediate establishment of a GSA or the holding of an activity if requested;
- require the designation of a staff member to be a liaison within a reasonable period of time; and
- limit parental notification to the fact that a GSA is established or activity is taking place but not that any particular child has joined.

ACSTA believes that the general intent of Bill 24 is commendable. Catholic schools have long encouraged GSA's in accordance with its LIFE Framework so that children identifying with LBGTQ2S+A or who have sexual/gender identity questions have a safe place to meet. In keeping with its mandate to permeate catholicity in all aspects of school, separate school administrators take a faith-guided approach to assisting students in understanding and dealing with their challenges.

However, Bill 24, while seeking to improve the lives of children, requires clarification in order to avoid putting children and their families at risk. Bill 24 must take a holistic child-centered approach by balancing child and parental rights. A few issues have been identified, which ACSTA is working with Alberta Education to clarify.

Parental Notification

The most important issue is whether Bill 24 is too broad in restricting all disclosure to parents as it does not address the situation of imminent harm. Thus, it is not clear whether the child's participation in a GSA (and any related personal information revealed from the participation) can be disclosed to a parent/guardian where there is an imminent risk of harm to a child (psychological or physical) that is related to the child's gender/sexual identity. Section 4 of the *Child, Youth and Family Enhancement Act* states: "Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director". However, this does not provide an answer to whether disclosure is permitted in a situation of imminent harm. Further, the notification requirement is to the director and not to the parent/guardian. The main concern is that, for example, if a child is suicidal or being bullied, professional treatment, therapy and/or emergency intervention services may be required immediately. Without parental notification in such circumstances, which would necessarily require the disclosure of all personal information, the obligation to care for the child falls on the school. It appears that this is an unintended consequence of the legislation as this would require the school to step in the shoes of the guardian and take on the risk and liability of the child's well-being. In such circumstances, in order to provide effective and comprehensive supports to the child, the full context of the child's situation must be shared with the parents, who can then be supported by the school to seek appropriate help for the child. Bill 24 needs to be amended in a way that ensures that in critical situations where harm

is possible, parents are provided all relevant personal information about the child so that the proper and tailored professional services can be obtained without delay.

Secondly, section 50.1(1) of the *School Act* requires that parents receive notification from the school board when their child is involved in a course of study that deals with religion or human sexuality. Bill 24 amends this part of the *School Act* to exempt parental notification when it pertains to GSAs. This is of potential concern to some parents if the club or activity would expose a student to sexual or other content that is contrary to Catholic values. Separate schools take the position that the parent is the primary educator of their child. Bill 24 therefore diminishes the parents' Charter right to freedom of religion. The ultimate question is whether the Bill's limitation to this right is justified in a free and democratic society given the potential risk of harm to a child of being outed to a parent.

Moreover, a one-size-fits-all approach cannot work as it does not take into account a student's age, maturity or any history of trauma, special needs, mental health, faith or social concerns. Whether a child is capable of understanding the topics being discussed and/or consenting to participate is another concern that is not addressed by the legislation.

Nature of GSA Activities

The second issue arising from Bill 24 is whether parents are entitled to know the nature of the activities taking place within the GSA or whether the notification is limited to the formation of the GSA and/or the holding of an activity. Currently, parents receive notification of the subject matter and relevant details of any lessons that entail sex education. It is conceivable that the GSA activities will include sexual subject matter. Thus, it is not clear whether parents have a right to know the subject matter of an activity being held by a GSA.

Another related issue is the fact that Bill 24 requires the Principal to immediately approve *any* activity suggested by the GSA. In a denominational school with constitutionally protected rights to ensure permeation of Catholic principles, this may be over-reaching and a breach of the Separate school's constitutional rights and parental religious rights. If a GSA wished to host sexual education seminars that would teach practices that are contrary to Catholic values, would such a request need to be automatically approved? It is likely that this would result in a legal challenge on the basis that it violates freedom of religion and the right of the separate school to maintain its denominational character.

FOIP

Finally, there appears to be an inconsistency between Bill 24 and FOIP. For example, if a parent makes a FOIP request seeking specific information with respect to whether their child has joined a GSA, section 17 prohibits the release of the information only if it is an "unreasonable invasion of a third person's personal privacy". Further, section 84(1)(e) of FOIP allows a guardian to access the personal information of a minor unless it is an unreasonable invasion of personal privacy of the minor. The provisions of FOIP are paramount to the guardianship rights pursuant to the *Family Law Act*. However, it is unclear whether a guardian's FOIP request will be categorically denied as a result of Bill 24 on the basis that it is "unreasonable", or whether the definition of 'unreasonable' will be evaluated in light of the overall circumstances.

While GSAs are welcome in all Catholic schools in Alberta, there are some concerns surrounding the limit to parental disclosure and the requirement to immediately approve *any* activity, particularly if that activity is contrary to Catholic values. Further, ACSTA believes that parents and guardians are the primary educators of their children and thus, any restriction on this right needs to be justified in light of evidence that disclosure would cause harm. A blanket refusal to communicate information to parents without some assessment of the child's best interest in the particular circumstance may be problematic for the reasons noted above. While commendable in many respects, Bill 24 does not contemplate all of the situations in which the child's rights may not override parental or constitutional rights. ACSTA continues to seek clarity on these issues with Alberta Education.