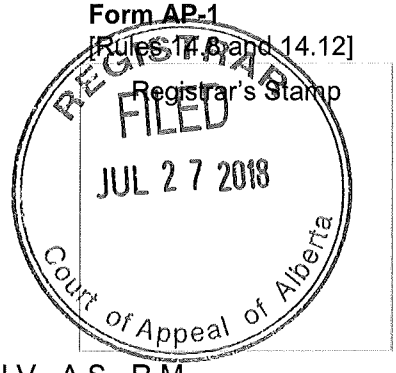
COURT OF APPEAL OF ALBERTA

Form AP-1
[Rules 14.6 and 14.12]



Registrar's Stamp

COURT OF APPEAL FILE NUMBER: 1801-0239AC

TRIAL COURT FILE NUMBER: 1808-00144

REGISTRY OFFICE: CALGARY

APPLICANTS: P.T., D.T., F.R., K.R., P.H., M.T., J.V., A.S., R.M., UNIVERSAL EDUCATION INSTITUTE OF CANADA, HEADWAY SCHOOL SOCIETY OF ALBERTA, THE CANADIAN REFORMED SCHOOL SOCIETY OF CALGARY, GOBIND MARG CHARITABLE TRUST FOUNDATION, CONGREGATION HOUSE OF JACOB MIKVEH ISRAEL, KHALSA SCHOOL CALGARY EDUCATION FOUNDATION, CENTRAL ALBERTA CHRISTIAN HIGH SCHOOL SOCIETY, SADDLELAKE INDIAN FULL GOSPEL MISSION, ST. MATTHEW EVANGELICAL LUTHERAN CHURCH OF STONY PLAIN, ALBERTA, CALVIN CHRISTIAN SCHOOL SOCIETY, CANADIAN REFORMED SCHOOL SOCIETY OF EDMONTON, COALDALE CANADIAN REFORMED SCHOOL SOCIETY, AIRDRIE KOINONIA CHRISTIAN SCHOOL SOCIETY, DESTINY CHRISTIAN SCHOOL SOCIETY, KOINONIA CHRISTIAN SCHOOL-RED DEER SOCIETY,COVENANT CANADIAN REFORMED SCHOOL SOCIETY, LACOMBE CHRISTIAN SCHOOL SOCIETY, PONOKA CHRISTIAN SCHOOL, PROVIDENCE CHRISTIAN SCHOOL SOCIETY, LIVING WATERS CHRISTIAN ACADEMY, NEWELL CHRISTIAN SCHOOL SOCIETY, SLAVE LAKE KOINONIA CHRISTIAN SCHOOL, YELLOWHEAD KOINONIA CHRISTIAN SCHOOL SOCIETY, THE RIMBEY CHRISTIAN SCHOOL SOCIETY, LIVING TRUTH CHRISTIAN SCHOOL SOCIETY, LIGHTHOUSE CHRISTIAN SCHOOL SOCIETY, DEVON CHRISTIAN SCHOOL SOCIETY, LAKELAND CHRISTIAN SCHOOL SOCIETY, 40 MILE CHRISTIAN EDUCATION SOCIETY, HIGH LEVEL CHRISTIAN EDUCATION SOCIETY, PARENTS FOR CHOICE IN EDUCATION, and ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL – WESTERN CANADA

STATUS ON APPEAL: APPELLANTS

RESPONDENT:	HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
STATUS ON APPEAL:	RESPONDENT
DOCUMENT:	**CIVIL NOTICE OF APPEAL**

APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION:

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WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. **Particulars of Judgment, Order or Decision Appealed From:**

   Date pronounced: June 27, 2018

   Date entered: June 27, 2018

   Date served: June 27, 2018

   Official neutral citation of reasons for decision, if any:
   (do not attach copy) 2018 ABQB 496

   (Attach a copy of order or judgment: Rule 14.12(3). **Judgment and Order Attached hereto.**

2. **Where the matter originated:**

   Alberta Court of Queen's Bench

   Judicial Centre: MEDICINE HAT

   Justice: J.C. KUBIK

3. **Portion of Decision being appealed** (Rule 14.12(2)(c)):

   a. Dismissal of the Application for injunctive relief suspending sections 16.1(6), 45.1(4)(c)(i) and 50.1(4) (restriction of parental knowledge) of the Alberta *School Act* for their infringement on the section 7 (security of the person) and 2(a) (freedom of conscience and religion) rights of the Appellants as protected by the

Canadian Charter of Rights and Freedoms (the "*Charter*"), as well as the infringement of the rights protected by sections 1(c) (freedom of religion) and (g) (right of parents to educate their children) of the *Alberta Bill of Rights* and the *Family Law Act,* further particulars of which are set out below;

b. Failure to address the substantial written and oral arguments of the Appellants in regard to the failure of the *School Act*, or any other legislative or regulatory provision related thereto, to protect vulnerable children from Gay-Straight Alliances ("GSAs"), by not establishing parameters in regard to, *inter alia*: age, permissible materials, supervision, or location;

c. Rejection of the evidence of potential and actual harm to young or otherwise vulnerable children from exposure to so-called "gender ideology" in the absence of parental oversight and consent, as evidenced in the expert reports of Dr. Miriam Grossman and Dr. Quentin Van Meter, and the evidence broadly, including the Affidavits of P.T. and J.P., further particulars of which are set out below;

d. Dismissal of the Application for injunctive relief that would prevent the defunding or de-accrediting of the Appellant schools in regard to the Annual Declaration, pending determination of the constitutionality of the challenged provisions of the *School Act,* further particulars of which are set out below; and

e. Finding that section 16.1(a) of the *School Act* (the "immediacy" provision in regard to section 16.1 clubs such as GSAs) does not give rise to a serious constitutional issue, further particulars of which are set out below.

4. Brief description of issues:

a. The Appellants have challenged the constitutionality of certain provisions of the Alberta *School Act* as amended by *Bill 24: An Act to Support Gay-Straight Alliances* ("Bill 24") (the "Provisions"). The Appellants applied for an interlocutory injunction staying the Provisions pending determination of their constitutionality, and preventing the Respondent from taking any action to defund or de-accredit or otherwise penalize or disadvantage the Appellant schools in relation to the non-submission of the Annual Declaration.

b. The Annual Declaration is a statement required by Alberta Education, as part of the Annual Operating Plan, that all registered independent schools must provide

pursuant to section 3 of the *Private Schools Regulation* to Alberta Education once a year as a condition of operation and funding. For the 2018-2019 school year, Alberta Education required the Annual Declaration to be submitted online through a web portal. As a condition to completing the online submission process, Alberta Education required schools to attest to comply with the *School Act*, including the Provisions. The Appellants object to being compelled to attest to comply with legislation which they say violates their religious beliefs, their *Charter* rights and freedoms and which is under constitutional challenge. They object to being compelled and coerced to attest to comply under the threat of de-accreditation and defunding if they refuse.

c. The requests for injunctive relief were heard on June 20, 2018, and dismissed by the Honourable Justice J. C. Kubik on June 27, 2018 (the "Decision"). This is an appeal of portions of the Decision.

Request for injunction preventing the limiting of parental information

d. Sections 16.1(6), 45.1(4)(c)(i) and 50.1(4) of the *School Act* require schools to limit the information that all parents in Alberta may receive about their own children, regardless of the child's age, vulnerability, disability or other factors, in regard to participation in a GSA or GSA-related activities (the "Parental Information Provisions"). No distinction is made by the Provisions or the *School Act* in regard to age or disability, meaning that a school must restrict the information that a parent receives about their five year old or autistic child, the same as information about the average sixteen or seventeen year old. This is contrary to Supreme Court of Canada jurisprudence regarding the rights of parents, as well as the doctrine of "mature minors" in Alberta, and across Canada. The Appellants state the legislated restriction of parental knowledge undermines the ability of parents to support and protect their children. The Provisions are without precedent in Canadian history.

e. The lower court Justice erred in law by:

    1) Failing to order a stay of the Parental Information Provisions pending determination of their constitutionality;
    2) Finding that requiring schools to withhold critical information from all parents, regardless of the child's age or disability, does not establish

irreparable harm to the constitutional rights and security of children and parents protected by sections 7 and 2(a) of the *Charter*, or the quasi-constitutional rights of parents under section 1(g) of the *Alberta Bill of Rights*, or the legislative rights of children and parents under the *Family Law Act*;

3) Finding that the balance of convenience is on the side of the Respondent, as opposed to parents and children, in keeping the Parental Information Provisions in place pending trial, which jeopardizes child safety across the province and deprives parents unlawfully of their constitutional and legislative rights; and
4) Ignoring or failing to address the oral and written arguments of the Appellants regarding the legal doctrine governing mature minors, and the difference at law between restricting information from parents about mature minors versus young or otherwise vulnerable children.

Rejection of Evidence

f. The lower court Justice erred in law and in fact by rejecting, entirely and without credible reason, the evidence of harm that may result to young or vulnerable children who are exposed to so-called "gender ideology" in the absence of parental oversight, as explained in the Affidavits of Dr. Grossman and Dr. Van Meter. The lower court Justice erred in law and in fact in finding that the harm described in the Affidavits of P.T. and J.P, and others was "anecdotal" in nature, and impermissible hearsay, while applying an entirely different standard to the Respondent's evidence, which was accepted without question.

Annual Declaration

g. The lower court Justice erred in law and in fact in refusing to grant injunctive relief to prevent the Respondent from taking punitive steps against the Appellant schools for asserting their *Charter* rights and freedoms in regard to the Annual Declaration. Justice Kubik committed a palpable and overriding error by deciding that there was no immediate risk to school's funding or accreditation.
h. Further, the lower court Justice erred in law in determining that the case of *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, stands

for the proposition that the state may enact legislation which compels schools to broadly infringe the constitutional rights of children and parents as protected by section 7 of the *Charter*. The lower court Justice further erred in assuming that the Trinity Western University decision is authority for upholding government action that compels schools to attest to comply with said requirement under the threat of a loss of accreditation and funding, or other punitive or oppressive government action.

Section 16.1(a) "Immediacy"

i. Section 16.1(1)(a) of the *School Act* requires a school to "immediately" grant permission to establish a GSA upon the request of one student, without consultation with the school board, or parents, and without any consideration of the rights of parents as protected by the *Charter*, the *Alberta Bill of Rights*, and the *Family Law Act*.

j. The lower court Justice erred in law in finding that there is no serious constitutional issue raised by section 16.1(1)(a) in light of the filed materials of the Appellants at the lower court, including, *inter alia*:

    1) The requirement that all schools restrict information from all parents regardless of the age or disability of their child or children;
    2) The complete failure of the *School Act* and other government policies and regulations to establish safe and healthy, or any, parameters surrounding what materials may or may not be provided to children at a GSA, or at what age;
    3) Whether young children can be in the same GSA at the same as older children;
    4) Whether an adult must be present at a GSA;
    5) Which adult or adults may have access to children at a GSA, and how they are vetted (if at all);
    6) Where GSAs take place (in practice, GSAs are taking place off campus, at the homes of adults who are not even school employees).

5. **Provide a brief description of the relief claimed:**
   a. The Applicants request an interlocutory injunction staying the operation of the following sections of the Alberta *School Act* pending the determination of their constitutionality:
      i. 16.1(6), 45.1(4)(c)(i) and 50.1(4);
      ii. Section 16.1(1)(a);
   b. Further, or in the alternative, the Applicants request an interlocutory injunction prohibiting the Respondent from enforcing the above sections as against the Applicants, or taking punitive actions against the Applicants for non-compliance with the Provisions pending a determination of the constitutionality of the Provisions by the Court;
   c. Further, the Applicants request an interim injunction preventing the Respondent from taking any action to defund or de-accredit or otherwise penalize or disadvantage the Applicant schools herein in relation to their inability to expressly attest to comply with the entire *School Act*, including the Provisions and Section 45.1 specifically.
6. **Is this appeal required to be dealt with as a fast track appeal?** (Rule 14.14)

   Yes
7. **Does this appeal involve the custody, access, parenting or support of a child?** (Rule 14.14(2)(b))

   No
8. **Will an application be made to expedite this appeal?**

   Yes
9. **Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate?** (Rule 14.60)

   No
10. **Could this matter be decided without oral argument?** (Rule 14.32(2))

    No
11. **Are there any restricted access orders or statutory provisions that affect the privacy of this file?** (Rules 6.29, 14.12(2)(e),14.83)

    No

12. List respondent(s) or counsel for the respondent(s), with contact information:

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If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).

13. Attachments (check as applicable)

Decision of June 27, 2018 (attached)

Order filed July 5, 2018 (attached)