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FACTS: Gender identity & gender expression in Alberta schools

Purpose

Recently, a number of school boards across Canada have begun to consider the unique needs of sexual and gender minorities within their schools. This sheet is intended to provide facts to help those in support of inclusion policies for sexual and gender minorities in Alberta schools. (Note: This fact sheet does not constitute legal advice.)

What does 'sexual and gender minorities' mean?

The phrase 'sexual and gender minorities' is one used in policy to describe a broad range of people, including those who are or are perceived as lesbian, gay, bisexual, transgender, transsexual, two-spirit, queer or questioning their sexual orientation, gender identity, or gender expression.

Sexual & gender minorities in Canadian law

Canada's *Charter of Rights and Freedoms* (part of the Constitution) includes explicit protection for sexual orientation. Section 15 of the *Charter* enumerates (lists) protected grounds against discrimination. In 1995, the case *Egan v. Canada* established sexual orientation as an analogous (comparable/similar) protected ground.

References:

Supreme Court of Canada. (1995). *Egan v. Canada*. Retrieved from <http://www.canlii.org/en/ca/scc/doc/1995/1995canlii98/1995canlii98.pdf>

Wikipedia. (no date). *Egan v. Canada*. Retrieved from http://en.wikipedia.org/wiki/Egan_v._Canada

Government of Canada. (1982). *Constitution Act—Part I: Canadian Charter of Rights and Freedoms*. Retrieved from http://laws.justice.gc.ca/eng/charter/CHART_E.PDF

However, gender identity and gender expression are not explicitly protected in Canadian federal law. Prior attempts to include these terms in the *Criminal Code of Canada* and the *Canadian Human Rights Act* failed when Bill C-389 passed through Parliament but died in Senate due to a federal election call. At this time, new bills are before Parliament to attempt to make these protections explicit.

References:

Openparliament. *Bill C-389 (Historical)*. Retrieved from <http://openparliament.ca/bills/40-3/C-389/>

Sexual & gender minorities in Alberta law

Alberta's *Human Rights Act* (2009) includes explicit protection for sexual orientation. Prior to explicit inclusion, Albertans were protected by sexual orientation being 'read in' to provincial human rights protection after the Supreme Court decision of *Vriend v. Alberta* (1998). At this time, gender identity and gender expression are not explicitly protected in Alberta law.

References:

Government of Alberta. (2009). *Alberta Human Rights Act*. Retrieved from <http://www.qp.alberta.ca/documents/Acts/A25P5.pdf>

Supreme Court of Canada. (1998). *Vriend v. Alberta*. Retrieved from <http://www.canlii.org/en/ca/scc/doc/1998/1998canlii816/1998canlii816.pdf>

Wikipedia. (no date). *Vriend v. Alberta*. Retrieved from http://en.wikipedia.org/wiki/Vriend_v._Alberta

Other important laws & regulations

However, human rights legislation is not the only applicable law or regulations for Alberta schools to consider. According to the *School Act* (2000), "a board shall ensure that each student enrolled in a school operated by the board is provided with a safe and caring environment that fosters and maintains respectful and responsible behaviours" (Section 45, paragraph 8, p. 44).

References:

Government of Alberta. (2000). *School Act*. Retrieved from <http://www.qp.alberta.ca/documents/Acts/S03.pdf>

Under the *Teaching Profession Act* (2000), the Alberta Teachers' Association (ATA) has an important role to play for all teachers of public, separate, and Francophone schools. The ATA itself has two important constitutional documents that relate to sexual and gender minority inclusion. The first is the *Declaration of Rights and Responsibilities for Teachers*, which states that "Teachers have the right to be protected against discrimination on the basis of prejudice as to race, religious beliefs, colour, gender, sexual orientation, gender identity, physical characteristics, disability, marital status, family status, age, ancestry, place of origin, place of residence, socioeconomic background or linguistic background" (Item 9).

The second is the *Code of Professional Conduct*, which states that in relation to pupils (students), "The teacher teaches in a manner that respects the dignity and rights of all persons without

prejudice as to race, religious beliefs, colour, gender, sexual orientation, gender identity, physical characteristics, disability, marital status, family status, age, ancestry, place of origin, place of residence, socioeconomic background or linguistic background" (Item 1).

In Alberta, teachers teaching within public, separate, or Francophone schools are all required to be active members of the ATA.

References:

Government of Alberta. (2000). *Teaching Profession Act*. Retrieved from <http://www.qp.alberta.ca/documents/Acts/T02.pdf>

Alberta Teachers' Association. (2004). *Code of Professional Conduct*. Retrieved from <http://www.teachers.ab.ca/SiteCollectionDocuments/ATA/Publications/Teachers-as-Professionals/IM-4E%20Code%20of%20Professional%20Conduct.pdf>

Alberta Teachers' Association. (2004). *Declaration of Rights and Responsibilities for Teachers*. Retrieved from <http://www.teachers.ab.ca/SiteCollectionDocuments/ATA/Publications/Teachers-as-Professionals/IM-5E%20Declaration%20of%20Rights.pdf>

Sexual & gender minority inclusion in Canadian school boards

The first school board to create explicit sexual and gender minority inclusion in the prairie provinces is the Edmonton Public School Board, passed on November 29, 2011. (Retrieved from <http://www.epsb.ca/policy/ifa.bp.shtml>).

A number of Canadian school boards are choosing to make sexual and gender minority inclusion an explicit part of policy. These include:

Vancouver School Board. (2004, February 16). Retrieved from <http://www.vsb.bc.ca/district-policy/acb-lesbian-gay-bisexual-transgender-transsexual-two-spirit-questioning>

Greater Victoria School District. (2004, February). Retrieved from http://www.sd61.bc.ca/edsrvs/Discrimination_Committee/Recommendations_and_Action_Plan.pdf

Toronto District School Board. (no date). Retrieved from http://www.tdsb.on.ca/_site/ViewItem.aspx?siteid=15&menuid=7098&pageid=6194