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Parental Rights, Teachers' Professional Autonomy, and Contested Pedagogy Under The Alberta Human Rights Act

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Abstract

Under *Section 11.1* of *The Alberta Human Rights Act* (2009), teachers are required to give prior written notice to parents when the subject matters of religion, human sexuality and sexual orientation are primarily and explicitly addressed in class. In light of this legislation, the intent of this initial one-year research project is to examine the policies and procedures of a particular school district's compliance with *Section 11.1*. Specifically, this article examines: To what extent has *Section 11.1* changed teachers' pedagogical practices? As such, this article has two primary objectives: firstly, to provide an overview of the background leading up to the legislation and, secondly, to report the legislation's impact on teachers' pedagogical practices. This article argues that teachers' internalization of the legislation has had varying effects on their teaching practice and professional autonomy. This study will be expanded to consider the legislation's effects on curricular practice across the Province of Alberta.



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Introduction

Teachers' professional autonomy has come under greater scrutiny on a number of levels. At a central administrative level, increased accountability measures are commonly put in place to measure teachers' performance toward increased student achievement. At the local school level, teachers are being required increasingly to accommodate parental demands to amend the curriculum or exempt their child from particular curricular topics due to private, familial, or community beliefs and values. Failure to meet such accommodations often leads to parental challenge at minimum, or in more extreme cases, teacher reprimands or dismissals. While this is not a new phenomenon, this level of scrutiny, particularly towards teaching controversial issues, has called for greater examination of the potential repercussions that such accommodations have for teachers' practice and professional autonomy.

This article examines the implications of how a parental opt-out clause in the *Alberta Human Rights Act* (2009) impacts teachers' practice and professional autonomy in the Province of Alberta. We highlight the legislative and public debate during the discussions in the legislative assembly and report on the legislation's impact on teachers' pedagogical practices. This article argues that early indicators suggest that teachers' internalization of the legislation has had varying effects on their teaching practice as well as on public education more generally. Furthermore, this article argues this legislation has had a negative impact on teachers' professional autonomy. Following a brief outline of the research methods employed in this study, we situate this particular debate within the broader research on teachers' professional autonomy before turning to the particularities of the new parental opt-out clause in Alberta.

Research Methods

Research methods employed in this study included document analysis and individual interviews with teachers, administrators, and central office personnel from a large public school board in southern Alberta. Document analysis comprised an initial review of Bill 44, followed by analysis of legislative discussion regarding Bill 44 in second reading as recorded in Hansard (The 27th Legislature, Second Session, Alberta Hansard, 2009).

The interviews reflected a qualitative approach that was considered appropriate in uncovering and contextualising participants' perspectives regarding their experience of the parental opt-out clause and its effects. In such situations, the interviewer is therefore "free to build conversation within a particular subject area" (Patton, 1990, p. 283) while endeavouring to access participants' knowledge and understanding (Marshall & Rossman, 2006).

Eighteen schools were contacted for the study to gain base-line data regarding the impact of *Section 11.1* in their schools. Of particular interest were the views of teachers involved in secondary Social Studies or English where instances of addressing issues of religion, human sexuality and sexual orientation may occur peripherally in the curriculum and are considered to be under the scope of *Section 11.1*. The background and rationale for the ethically approved study were outlined. Interviews were requested to discuss Bill 44. In response, thirteen participants, drawn from six schools and senior central administration, agreed to participate in interviews. As such, participants were self-selected. The interviews were semi-structured, approximately one hour in duration.

Teachers' Professional Autonomy

Teachers' professional autonomy is embedded in the complex socio-cultural concepts of identity and professional practice. Teachers' professional autonomy and identity are thought to revolve around a cluster of core values and principles that drive the individual's commitment to the teaching profession. It is of particular relevance given the perception that greater parental discretion over curricular matter will necessarily impact teachers' professional autonomy both directly in the ability to challenge set curricula as approved by the province (Grimmett, Dagenais, D'Amico, Jacquet, & Ilieva, 2008). Specifically, when teachers' values and principles are challenged by socio-politically constructed change such as the policy mandates of *Section 11.1* to which we will examine in the following section, teachers' roles become conflicted (Day, Elliot, & Kington, 2005; Day & Leitch, 2001; Lasky, 2005). Teacher professionalism is context-dependent and increasingly scrutinized as teachers move between the school and classroom at one level, and the wider community and society (Ball & Goodson, 1985). We recognize that teacher identity is dynamic and in constant negotiation with parents and the community (Day, 2002; Kelchtermans & Vandenberghe, 1994; Spinner-Halev, 2005). Yet, this can be a site of personal struggle in maintaining this delicate balance of being attentive to the diverse values that families' hold and their understanding of their role as teachers.

The classroom location of teachers contributes to a sense of professional, if partial, autonomy, and co-exists with norms of privacy (Jones, 2003; Little, 1990; Lortie, 1975). Teachers cope with greater parental and social expectations in addition to the pressure of implementing measures that affect their professional practice, because their values often extend beyond mere "contractual obligations" (Day et al., 2005). As such, the structure and discourses of schooling provide "some, but not other, possible choices" (Coldron & Smith, 1999). Tensions may develop between these discourses and teachers' professional autonomy.

Teaching as such is a highly political act. On the one hand, it involves a level of professional judgement and discretion about teaching and learning. Specifically, it involves making judgments about what to teach in relation to the prescribed program of studies. It involves teaching it in a way that is relevant and engaging for students. It requires teachers to reflect on *why* things ought to be taught. And yet in this level of professional judgement and autonomy, it is not done in isolation. Such decisions are necessarily taken in balance.

Lead up to the Parental Opt-Out Clause

In spring 2009, the Government of Alberta introduced the *Human Rights, Citizenship and Multiculturalism Act* (2009) to amend human rights legislation in the Province of Alberta. The need to amend the Alberta provincial legislation to include protections was related to sexual orientation and the government's attempt to do so in the preamble to Bill 44 suggests this move. It states:

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status [and which would now include] or sexual orientation. (Bill 44, Human Rights, Citizenship, and Multiculturalism Amendment Act, 2009).

Amendments to the Alberta provincial legislation were indicative of the need to align provincial human rights legislation with constitutional rights protected under the *Canadian Charter of Rights and Freedoms* (1982) specifically related to the scope and interpretation of equality rights under Section 15. In particular, the *Vriend v. Alberta* (1997) challenge to the Charter was the precursor for the province's need to rectify the omission of sexual orientation in the provincial human rights legislation. As it stood, the *Individual's Rights Protection Act* (IRPA) in Alberta offered no protection on the basis of sexual discrimination (Macklem, 1999). In a seven to one decision, the Supreme Court of Canada ruled in favour of Vriend stating that a legislative omission can still lead to a *Charter* violation in which the *IRPA* resulted in a denial of "equal benefit and protection of the law on the basis of sexual orientation which was sufficient to conclude that discrimination was present and there had been a violation of s. 15" (Vriend v. Alberta, 1997). In the aftermath of this Charter decision, the Government of Alberta was forced to accept that the right not to be discriminated against due to sexual orientation was a fundamental right of all Canadians in both provincial law and constitutional law under the *Canadian Charter of Rights and Freedoms*.

In 2009, amendments to include sexual orientation were brought forth in the *Human Rights, Citizenship, and Multiculturalism Act (2009)*. The final parental opt-out clause would be adopted under *Section 11.1* of the *Alberta Human Rights Act*, which states in part:

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. (*Alberta Human Rights Act*, Section 11.1)

The introduction of *Section 11.1* created much public debate given the legislation's contested nature and implications for the teaching profession.

Legislative Debate regarding the Parental Opt-out Clause

Political and public debate prior to the implementation of the parental opt-out clause is important for the purposes of this study in understanding the vociferous legislative and public debate regarding the parameters of parental rights in education. Bill 44 was introduced on April 28, 2009 by Lindsay Blackett, Minister of Culture and Community Spirit. The rationale for Bill 44 was to: attend to the administrative changes to the Alberta Human Rights Commission; increase transparency within the Commission; align judicial decisions and current legislation regarding the inclusion of sexual orientation, and; that "the rights of parents on the education of their child would also be confirmed" (The 27th Legislature, Second Session, Alberta Hansard, April 29, 2009, 883). While it was of little surprise that amendments were to be proposed regarding the authority and scope of the Alberta Human Rights Commission together with the amendment to include sexual orientation in the Act, it was unexpected and unforeseen by the Opposition parties and the key educational stakeholders that a parental opt-out clause would be included in Bill 44.

The arguments for the inclusion of the parental opt-out clause were predicated on parents having the primary right to decide the kind of education their child receives. The Education Minister at the time, David Hancock, stated:

There are topics of human sexuality, which have always been issues of concern to parents about how their children are instructed in those areas. Many parents want to know when that instruction happens, and they want to be able to know either that their child could be excluded from that or included.... We would encourage parents to be involved in their children's education, to understand what's in the curriculum, and to have the opportunity, where they object, to have their child opt out. (The 27th Legislature, Second Session, Alberta Hansard, May 4, 2009, 927)

Furthermore, in developing an argument about the primary of parental rights, the Conservative government drew upon Article 26 of the *Universal Declaration on Human Rights* (1948), which states, "Parents have a prior right to choose the kind of education that shall be given to their children". In referring to Article 26 of the Declaration, the rationale for inclusion of this Section centers on the argument that parents are the final moral arbiters in their children's education. Never is this clearer than when Rob Anderson, Honourable Member of the Legislative Assembly for Airdrie-Chestermere, spoke regarding the need for the parental opt-out clause. He states:

The day that we undermine the central and critical role of parents and family in the fabric of our society is the first day of the decline of this province and of this country. Committed and thoughtful parenting is the key to positively shaping the lives of our next generation for the better, and there is no more effective parental arrangement than a committed mother and father working side by side for the benefit of their child. (The 27th Legislature, Second Session, Alberta Hansard, May 6, 2009, 1009)

In these various comments from the Conservative party, the rationale put forth was that parents have the right and discretion to educate their children in a particular manner when major contested moral, religious, and socio-political issues are concerned particularly for those issues that commonly lack consensus in the public sphere. In such cases, those sensitive topics are to be left in the hands of the family unit.

The critical response to Bill 44 was notable on a number of accounts. There was concern regarding the conflict of interest that would arise given the scope and authority of the Alberta Human Rights Commission in view of Commissioners on the Alberta Human Rights Commission being appointed by the Government of Alberta. This would mean that the individuals running the Commission would also be the same individuals who would sit as judges when any violations had been brought forth (Keeping, 2009, p. 2).

Further, the role of the Commission would still hold two primary objectives: that of education and advocacy, and; adjudication of complaints. This raised significant concerns for the public by bypassing legal due process and legal precedents, given that it would be Commissioners who would decide on complaints put forth. Additionally, it had particular implications for teachers who would now face the Human Rights Tribunal should there be a formal complaint regarding noncompliance of the parental opt-out clause. Teachers would be held before the Human Rights Tribunal rather than through the procedural and legal processes under the School Act, and would be called into question based on a human rights violation.

Given the potential recourse in how teachers could be held before the Alberta Human Rights Commission, considerable debate ensued both within and beyond the legislature regarding the teaching of controversial issues. The Alberta Teachers' Association (ATA),

Alberta School Boards Association (ASBA), the Alberta School Councils Association (ASCA), and the College of Alberta School Superintendents (CASS) issued a joint statement on their reservations regarding Bill 44 (Media Release, May 6, 2009). ASBA President Heather Welwood noted, “We support a parent’s right to determine what is best for the education of their child....., but *Section 11.1* of Bill 44 is unnecessary. The *Alberta School Act* already protects a parents’ rights with regard to what their children are taught” (Media Release, May 6, 2009, para 2). The *School Act*, section 50(2) states: “Where a teacher or other person providing religious or patriotic instruction receives a written request signed by a parent of a student that the student be excluded from religious or patriotic instruction.” (*School Act*, R.S.A. 2000, c. S-5, s. 50(2). Similar policies are written by Alberta Education addressing human sexuality in the curriculum whereby schools are required to inform parents when sensitive issues are addressed. At first glimpse, this would suggest a redundancy between the two parental opt-out clauses. Yet, a significant difference arises which places the burden on the individual teacher to comply with *Section 11.1*, and the potential legal repercussions are brought forth as a human rights violation. This calls into question whether the teaching of sensitive topics is a pedagogic matter or an issue of human rights. Ezra Levant argues that “Many of the cases that HRCs [Human Rights Commissions] now adjudicate have nothing to do with human rights” (Levant, 2009, p. 112). *Section 11.1* further changes the relationship between parents and teachers. Marilyn Sheptycki from ASCA makes this point: “Most parents are not looking to drag teachers or school boards before the Alberta Human Rights Commission. Most parents are looking for common sense to prevail” (Ibid, para. 3).

Given the place of the parental opt-out clause in human rights legislation and under the authority of the Alberta Human Rights Commission, the overarching concern raised by Opposition MLAs and the public was the potential “chill” that this would have on teachers’ practices in the classrooms. As Honourable Member Mason, Opposition Member of the Alberta Legislative Assembly, points out:

... even if the Human Rights Commission makes reasonable interpretations of the act when charges are brought, it will have a profound effect on the education of our children because teachers will never know what it is that they can talk about if issues relating to sexuality, sexual orientation, or religion come up spontaneously in a classroom outside of their lesson plan. So they will adjust their behaviour accordingly. You could call it self-censorship. (The 27th Legislature Second Session, Alberta Hansard, May 13, 2009, Issue 41e, 1163)

The fear of reprisal and being heard before a human rights tribunal creates an undue tension for teachers in classrooms and causes greater self-censorship in not knowing where the reasonable parameters of discussion may be extended.

Despite public debate regarding these concerns, following thirty-six days of debate, Bill 44 was passed on June 2, 2009. Voting by the Members of the Legislative Assembly indicated that 36 members of the Conservative Caucus voted against the Bill. Only 35 MLAs voted in favor. Several MLAs were absent, including Minister of Education Dave Hancock. The *Alberta Human Rights Act* came into effect in fall 2009, with a one-year grace period for the implementation of *Section 11.1* to allow time for Alberta Education and school districts to prepare for the parental opt-out clause.

Changes in Pedagogy and Practice

In considering the effects of this legislation, this study's primary concern was to gain an understanding of how teachers understood and negotiated the legislation in relation to the subject matter they teach in the classroom. The interviews obtained with teachers and administrators provided insight into some of the changes in pedagogy and educational practice that have occurred in Alberta. These changes can be better understood by looking at the conversational responses of the participants. These responses reflect the complexity of participants' experiences with *Section 11.1* in terms of their practice. Responses also highlight an apparent difference in administrators' and school principals' perceptions of the legislation's effects in comparison to classroom teachers. This article focuses on the responses of the teacher participants.

Responses of Teachers

Analysis of the teacher responses indicated that although no complaints had escalated to the level of the Human Rights Tribunal, the parental opt-out clause had nevertheless changed teacher practice at the classroom level. Teachers' interpretations of the parental opt-out clause had implications for those subjects beyond the explicit curriculum areas where topics of religion, sexuality and sexual orientation were addressed. Perceptions of teacher practice ranged from beliefs that such accommodations between teachers and parents had always been present prior to Bill 44, to the belief that there was now a palpable difference. In some cases, it amounted to a fear of the repercussions of non-compliance.

Experienced teachers noted that the legislation merely reified what had been previously dealt with on a more informal but nonetheless sensitive level. From this perspective, the "surprise in it being an issue is that we are always relatively sensitive to the broader issue and alternative and contentious points of view". In essence, the notable aspect of the legislation was its redundancy:

I think the legislation is already outmoded and says a lot about the older generation again trying to put their stamp on something that has been happening right under their feet for some time. In other words, too late to have much effect. It just puts the norm into text ... for some folks who need it in writing to believe and justify it to themselves. (Peter)

Two key points are noteworthy here. First, some teachers felt that the conversations regarding controversial or sensitive issues in the classroom had always been part of good professional practice. In this light, the legislation seemed to undermine practices already perceived in keeping with a teaching professionalism. The above teacher further observed that he had sent forms home for parent's signature and "not once in 28 years in the classroom have I had a parent conflict over this issue. I'm usually proactive about it. It is appreciated by parents at parent teacher interviews ... if we were going to watch a controversial film we'd send home a letter saying so with options for the parents".

Second, the above teacher was sceptical of the legislation's purposes in explicitly writing this procedure into the Act, suggesting it was indicative of a general trend towards greater control of teacher practice in a centralizing environment. He also highlighted an unanticipated consequence of the legislation in making teachers "fearful" in terms of their practice, despite the fact that practitioners were sensitive towards these contentious issues.

For other teachers, the legislation increased their awareness of potential legal repercussions and the necessity to pre-empt parents' and guardians' complaints to the school and/or school board. "One of the things we're noticing in terms of this new curriculum, is you have to know the subject *inside out* in order to (a) be able to step away from the landmines and know where a landmine's coming, and (b) be able to fend off any questions or comments" (Natasha). Thus, even though teachers were previously obligated to find ways to negotiate such issues, it appears there are now legal consequences for those who breach the legislation.

Some participant responses came from teachers of Social Studies, where contested issues often arise at the high school curricular level. As a result of an experience with a parent, teachers such as Natasha are cognizant of their professional rights when dealing with contentious issues. As the participant explains, "as a teacher, you have the full rights and the law behind you ... to have a conversation that is spontaneous" (Natasha). Similarly, she is aware that when spontaneous conversation occurs in her class, she and her students could have a legitimate discussion on topics such as androgyny and transgendered people. It consoles her that despite the legislation, "kids are so tolerant". Nevertheless, there is a professional responsibility to be "vigilant and present that second side" and she keeps this in mind at all times. This approach ties in nicely with the emphasis in the new Alberta Social Studies curriculum on 'multiple perspectives' and 'sources'. However, the fact that Social Studies had not been included in the subject areas thought to be affected by the legislation meant teachers were unprepared when problems did occur. "We certainly did not expect it at our level. There was no 'this is a possibility for Social Studies'" (Natasha).

When a parent phoned and requested to speak to her, Natasha was surprised. During Natasha's meeting with the parent, who always looks at her son's school binders, the parent's concerns regarding issues of faith and religion emerged. The parent wanted to know "what's going on, and were you heading this way?" As 'this way' was a reference to writing about positions on such topics as the earth's age, she was "concerned about the fact that they have a minority position, that it's 6,000 years old, and that he would be penalized". Interestingly, the parent informed Natasha that the church had made its congregation aware "that this was an option for parents ... that Bill 44 was for them in particular" and that "if they felt that there was something that went against the church teachings, they have this option, to have their child out".

Natasha felt her experience with the parent was positive. While she had been unprepared for it, (she had expected it to be a confrontation about gay rights) she nonetheless appreciated the parent's involvement in both her children's education and in the life of the school. It also meant, if in the future a more "aggressive" parent confronted her, she would be prepared and able to ask, "What is really concerning you? What is the bottom line?" Also, from Natasha's viewpoint, the parent was establishing her right to be there. "I'm here, I see what my kid does; I will be monitoring what he is going to take in." For Natasha, meeting with a parent fully informed of her rights under Bill 44, this experience:

basically ... made me aware of if I have an opinion on something, I present a second side, which I think is just good practice anyway. In social studies ... there's facts, but there's no ... line in the sand kind of thing and we do teach the multiple perspectives.

While Natasha described this conversation with the parent as positive, it does demonstrate a form of monitoring and surveillance of work that includes the potential to question

and challenge teacher practices. Although this can be construed as a form of transparency, the teacher is clearly aware of possible legal repercussions. If parents ‘monitor’ everything that goes on in their child’s school experience, then teachers also need to anticipate potential problem areas, find alternatives, weigh the issues carefully, and be conscious of their approach to topics, including an even-handed acknowledgment of various points of view on contentious issues. In effect, they now plan for scrutiny and potential liability.

This is evident in the case of John, who was censured over an instance in which he forgot to send home the opt-out form. As a teacher of English, he often used the film *Into the Wild* with his students. Given the film was part of the approved curriculum, he never “thought it had anything to do with Bill 44”. A letter would usually be sent home “highlighting some of the scenes that were involved” and he indicated that parents could opt-out. More often than not, he would receive comments from parents saying, “Stop asking me if my kid can watch a movie - they’re 16, 17 - we have so many forms to fill out - we only need one”. However, one semester, the inevitable happened.

I forgot to send it out ahead of time ... I had it on my desk, and it was about Bill 44. So we watched the film [Into the Wild] and there was a storm after that. Parents were upset about a couple of the scenes - driving by the nudist colony - so they got to our principal and he hadn't even seen the movie, but sided with the parents. And I had a letter put in my file that I breached Bill 44. (John)

John recounted how his teaching has shifted as a result of this experience. He has not used the film again. He is more cautious as there is already a letter of reprimand in his file and, in his opinion, another would only escalate the situation.

In light of the uncertainty regarding procedures and potential complaints, teachers have become more proactive in completing necessary paperwork to include curricular topics beyond those stated in the Alberta Education document (appendix A). Such proactive paperwork aims to ensure that teachers are in compliance by going beyond the stated expectations of the parental opt-out clause.

We are so trained now ... a teacher will come here and say 'I need to send a letter home' and I'll just sign it on the bottom. So officially coming from the office, right? The Alberta Ed. Form - it's part of ... our yearly forms ... and most of our teachers, they will write a letter home and say, 'the potential is here' ... if you have a problem, then sign it and then your daughter or your son will bring it back, for the records. (Samuel)

Teachers are attempting to mitigate potential complaints by sending letters home for any slight or potential perception by parents regarding references to religion, sexuality or sexual orientation. If a problem arises, the teacher and the school have the security of knowing that all the necessary information had been sent home regarding curricular material and presentations. By routinely following the established procedures, administration and staff could be secure in knowing that the intent and terms of the legislation had been respected, therein eliminating any grounds for complaint. Yet, in this heightened protocol for anything that remotely alludes to these topics, the very nature of the curriculum is called into question.

Teachers feel they carry the burden in trying to discern whether particular curricular topics fall within the clause. Given that no formal complaint has gone through the tribunal, it is

unclear how the legislation will be interpreted and adjudicated. Given this ambiguity, Bill 44 had been debated among staff regarding how they are to interpret and understand the implications of this legislation. Sam brought up the example of *Into the Wild*, questioning whether or not they should allow the film as part of the required component in media studies:

The one line that all of us could kind of agree on was that it states that the film must primarily be about - primarily and explicitly be about ... sex and/or religion. So in our minds, if that's the main driver of the film, then it comes under Bill 44 ... but to me, the film [*Into the Wild*] is not primarily about sex and/or religion. Yes ... there's sexual innuendo, but it's not primarily that. (Sam)

The interpretation of 'primarily' is therefore crucial to how the legislation is perceived by educators or parents.

Alberta Education has put out certain classes such as Religious Studies, CALM, [Career and Life Management] there's about seven of them, and that letters should be sent home. But here we have English, where a word can come up, but it's not as if the whole subject is about sexuality and religion. (Thomas)

English was not one of the subjects expected to be affected by the legislation. However, even though central administration has said that "teachers should not be worried about this in English because it doesn't apply to you ... yet my sense is that people are internalising it in terms of the repercussions" (Sam). In Thomas' view, this internalisation of possible repercussions has created a "chill" in the province's classrooms.

The problem becomes more acute when teachers indicated they were not properly prepared for the ramifications of the legislation by the school board. While they had been given a PowerPoint presentation on the subject,

there were no scenarios given such as 'what if a parent comes in and they do this, how would you react?'. None of that kind of role-playing so o.k., I've read the Bill 44 document; that doesn't make me an expert on the document. It doesn't make me equipped to deal with contingencies. (Sam)

Contingencies arise when parents object to what is being taught in class even though the curriculum demands that English courses include study of various media including film. In Sam's opinion, therefore, it is "redundant" to send letters home saying the curriculum is being taught. Nevertheless, it appears teachers are caught in the disconnect between the intentions of the legislation and how parents may interpret the legislation.

Implications

In light of the implementation of *Section 11.1*, teacher practice has indeed changed. Data from this study suggests teachers have internalized the legislation as a result of having to deal with complaints from parents regarding certain subject matters in the curriculum. These teachers now respond differently and proactively in how they plan for, integrate, and discuss potentially controversial subjects. This is evident in teachers' heightened awareness of the contested issues that can arise in the course of their practice. While in the past this awareness may have been implicit, it has now been brought to the fore. For example, in anticipation of how particular topics might be interpreted by parents, one participant has purposefully reconsidered how such

topics are worded. Topics for discussion and debate are now carefully pored over and may be reworked to ensure there is no possibility for misunderstanding or offense.

Furthermore, this study has revealed schools and teachers maintain an increased level of communication with their students' parents and guardians. While increased communication may be viewed quite positively in itself, the cumulative effect of this legislation has been to reshape power relations in the Alberta educational system. Although Alberta Education has always acknowledged the prime role of parents, it is unclear as to whether this legislation will make teachers increasingly vulnerable to the influence of highly informed parents who are aware of their legal rights. Whether this will have a 'chill effect' on open discussion of contentious issues in the Alberta curriculum remains to be seen.

Conclusion

When changes are not perceived as meaningful, teachers may negotiate new meanings to 'fit' the demands of legislative requirements such as *Section 11.1* to their practice and students. They may adopt, adapt, or merely comply with external demands in keeping with teachers' professional autonomy, albeit mediated and constrained, as they respond to changing conditions. In this context, some participants in the study believe they have a duty to prepare students for life beyond the classroom and share a belief that the purpose of education is to create critical thinkers. However, the teacher's professional sense of autonomy, as "thinking for oneself in uncertain and complex situations in which judgment is more important than in routine circumstances" (Pitt, 2010) is being chipped away by the current policy.

Ultimately, legislative policy such as *Section 11.1* has shifted the arena in which debate about educational curricular content takes place. While the parental opt-out clause can be seen as an attempt by the Government of Alberta to recognize the political nature and implications of the many perspectives that exist amongst its voting public, this study has highlighted the causal impact of such legislation on educators. *Section 11.1* invokes the element of caution in teachers' minds and in their teaching practice in Alberta schools and classrooms by potentially undermining teachers' professional autonomy.

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Appendix A

The Alberta Human Rights Act

(<http://www.qp.alberta.ca/documents/Acts/A25P5.pdf>)

Notice to parent or guardian

11.1(1) 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.

(2) Where a teacher or other person providing instruction, teaching a course of study or educational program or using the instructional materials referred to in subsection (1) receives a written request signed by a parent or guardian of a student that the student be excluded from the instruction, course of study, educational program or use of instructional materials, the teacher or other person shall in accordance with the request of the parent or guardian and without academic penalty permit the student (a) to leave the classroom or place where the instruction, course of study or educational program is taking place or the instructional materials are being used for the duration of the part of the instruction, course of study or educational program, or the use of the instructional materials, that includes the subject-matter referred to in subsection (1), or (b) to remain in the classroom or place without taking part in the instruction, course of study or educational program or using the instructional materials.

(3) This section does not apply to incidental or indirect references to religion, religious themes, human sexuality or sexual orientation in a course of study, educational program, instruction or exercises or in the use of instructional materials.

Appendix B

Notice under Section 11.1 of the *Alberta Human Rights Act*, Alberta Education, <http://education.alberta.ca/media/792790/ParentalNotificationGuidetoEducation.pdf>

On September 1, 2010, Section 11.1 of the *Alberta Human Rights Act* came into force. This section requires boards (including charter schools) to provide parents with notice where “courses of study, educational programs or instructional materials, or instruction or exercises...include subject matter that deals primarily and explicitly with religion, human sexuality or sexual orientation.” Where a parent makes a written request, teachers shall exempt the student, without academic penalty, from such instruction, course of study, educational program, or use of instructional material. These requirements do not apply to incidental or indirect references to religion, religious themes, human sexuality or sexual orientation.

The requirements in this legislation are not intended to disrupt instruction or the discussion of controversial issues in the classroom. (See *Controversial Issues* on pages 72-75 of the *Guide to Education*.) http://www.education.alberta.ca/media/6542444/guidetoed_2011-2012.pdf

Teachers and schools should continue to respectfully handle the decisions and perspectives of parents when providing instruction and choosing instructional materials. Section 11.1 of the *Alberta Human Rights Act* continues to call on teachers and school administrators to exercise their professional judgment to determine when notice should be provided to parents and to handle complaints or concerns raised by parents.

Determining When to Provide Notice to Parents

The Alberta Programs of Study contain the expected outcomes for students, achieved through the instructional choices made by certificated teachers. In light of the requirements in section 11.1, Alberta Education has done a review of the Programs of Study to identify those courses that contain outcomes that deal primarily and explicitly with religion, human sexuality or sexual orientation. The following courses have been identified as containing outcomes that require notification under section 11.1:

Aboriginal Studies 10 – Theme II: Aboriginal Worldviews → religion

Career and Life Management (CALM) → human sexuality

Career and Technology Studies (CTS) Reproduction & Readiness for Parenting (HCS3050) → human sexuality

Career and Technology Studies (CTS) → Developing Maturity & Independence (HSS1040) → human sexuality

Health (Grades 4, 5 and 6) → human sexuality

Health and Life Skills (Grades 7, 8 and 9) → human sexuality

Religious Ethics 20 → religion

Religious Meanings 20 → religion

World Religions 30 → religion

Notification under section 11.1 may also be required for locally developed courses that contain subject matter that deals primarily and explicitly with religion, human sexuality or sexual orientation.

Depending upon the choices teachers make in how outcomes are taught and the instructional materials that will be used, other courses or programs of study may also require notification to parents under section 11.1. When determining whether notification is required, teachers or boards may wish to consider the following:

1. Notification is required where the instructional material, exercise, outcome or course contain subject matter that deals **primarily and explicitly** with religion, human sexuality or sexual orientation.

- For the instructional material, exercise, outcome or course to be considered to deal explicitly with religion, human sexuality or sexual orientation, there must be no question that the subject matter is intended to be about religion, human sexuality or sexual orientation. A religious interpretation of an otherwise non-religious subject matter would not be considered explicit. For example, the intent of including evolution in the Science programs of study is to explore its foundation in scientific theory. Although there may be religious interpretations of the origin of life, the inclusion of evolution is not intended to be explicitly about religion. Similarly, in order to be considered explicitly about “human sexuality”, an outcome, course, exercise or instructional material must also address human sexual behaviours. Therefore, outcomes within the Science programs of study that deal only with the anatomy and physiology of human reproduction are not explicitly about human sexuality; however, outcomes in CALM that examine aspects of healthy sexuality and responsible sexual behaviour are explicitly about human sexuality.
- Even if the subject matter deals **explicitly** with religion, human sexuality or sexual orientation, the outcome, course, exercise, or instructional material must also **primarily** deal with religion, human sexuality or sexual orientation. For example, even though various outcomes in the Social Studies programs of study include explicit references to “religion”, the outcomes are primarily about the core concepts of citizenship and identity. Similarly, notification is not required where an instructional material contains subject matter that explicitly deals with religion, human sexuality or sexual orientation, unless that instructional material is also primarily about one of these subjects.

2. Section 11.1 is clear that notification to parents is not required for indirect or incidental references to religion, religious themes, human sexuality or sexual orientation in an outcome, course, exercise or instructional material.

- Where a reference to religion, religious themes, human sexuality or sexual orientation occurs indirectly or in connection to another subject matter in classroom discussions, notification is not required. Therefore, teachers should not avoid topics where these subject matters may arise nor should they feel the need to stop classroom discussion.
- Similarly, where a course of study or education program does not already deal primarily and explicitly with religion, human sexuality or sexual orientation,

references to these subject matters in student projects or presentations would be considered incidental and notification would not be required.

3. Section 11.1 does not apply to student behaviour or interactions that are not related to courses of study, education programs, instruction, exercises or instructional materials. Therefore, it does not affect the ability of boards and teachers to address bullying or disciplinary issues, including those related to religion, human sexuality or sexual orientation.

How to Provide Notice to Parents

Notification to parents under section 11.1 should be in writing and allow the parent enough time to request that their child be exempted from the instruction or exercise at issue. Section 11.1 does not require teachers or boards to obtain parental consent before providing the instruction or exercise. Notification procedures must include the following:

1. A notice provided to the parent indicating that a particular outcome or component of a course contains subject matter that deals primarily and explicitly with religion, human sexuality or sexual orientation. A sample notice form can be found in Appendix 4 of *the Guide to Education*. http://www.education.alberta.ca/media/6542444/guidetoed_2011-2012.pdf

2. In the circumstance where a student is registered for a specific course which deals primarily and explicitly with religion, sexual orientation or human sexuality, notice may be given by providing a clear notice to the parent on the registration form for said course identifying that the course or a portion thereof is primarily and explicitly about religion, sexual orientation or human sexuality. A parent so notified is encouraged to give notice of their request for exemption at the time of registration.

3. A separate board, a board which offers an alternative program that emphasizes a particular religion, or a board which has the teaching of religion or faith-based education programs on its premises, may satisfy the requirement to give notice of religious instruction by providing a clear statement on registration forms indicating to parents that they are enrolling their child in a school where religious instruction, exercises or instructional materials are used and that religion permeates the school program.

Exclusion from Instruction, Exercise or Use of Instructional Material

1. Where a parent makes a written request, section 11.1 requires a teacher to exclude a student, without academic penalty, from the instruction, exercise or use of instructional material that includes subject matter that deals primarily and explicitly with religion, human sexuality or sexual orientation. The parent should indicate in their written request whether they want the student to leave the classroom or place where the instruction or exercise is taking place or whether they want the student to remain in the classroom without taking part. A sample exemption form can be found in Appendix 4 of the *Guide to Education* http://www.education.alberta.ca/media/6542444/guidetoed_2011-2012.pdf

How to Handle Concerns or Complaints from Parents

Boards must ensure that concerns or complaints from parents are handled in an open, fair, objective and timely manner, and in accordance with their appeal procedures as required by Section 123 of the *School Act*. Schools and teachers are encouraged to resolve concerns or complaints from parents regarding the requirements in Section 11.1 at the local level.

Procedure:

1. If a parent has a complaint related to the provision or non-provision of notice or the exclusion of his or her child from instruction, the parent must first address the issue with the teacher. In the event that the matter cannot be resolved in this normal course of discussion with the teacher involved, the parent shall provide the teacher with a written statement outlining the purported breach, the action explained in sufficient detail to allow for a full analysis to take place.

2. Upon receipt of a formal complaint in writing, the teacher may continue to attempt resolution in an informal and Without Prejudice basis.

3. In the event that the matter cannot be resolved between the teacher and the parent, either the parent or the teacher may refer the matter to the principal.

4. The principal may engage in discussion with the parent and the teacher, separately or together, on a Without Prejudice basis, in a further attempt to resolve the matter.

5. In the event that the matter cannot be appropriately resolved at the school level, either the principal, teacher or parent may refer the matter to the board for resolution via the procedures established by the board in accordance with Section 123 of the *School Act*, and as directed by the Minister of Education. In the event of such a referral, the teacher shall provide a statement in writing responding and providing analysis of the complaint.

“Without Prejudice” is a legal concept that encourages parties to resolve matters between them without being constrained in discussions by a fear that what they say may be used against them in a formal process. This encourages full and fair discussion without concern that statements may be misquoted or taken out of context. Parties may wish to identify those communications that are made on a Without Prejudice basis. This may include marking written communications “Without Prejudice.”

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