Critical Education

Volume 10 Number 19 November 15, 2019 ISSN 1920-4175

Section 11.1 of the Alberta Human Rights Act

Implementation, Reactions and Legacy

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Citation: Esterhuizen, A., & Gereluk, D. (2019). Section 11.1 of the Alberta Human Rights Act: Implementation, reactions and legacy. *Critical Education, 10*(19), 1-22. Retrieved from: http://ices.library.ubc.ca/index.php/criticaled/article/view/186447

Abstract

Introduced in 2009, Section 11.1 of the Alberta Human Rights Act required schools to provide prior written notice to parents when classroom activities deal explicitly with religion, human sexuality, or sexual orientation. Parents then had the right to request their child be excluded from that portion of study. In the first province-wide assessment of this legislation, we analyzed contextual documents and surveyed practicing teachers to determine if, and to what extent, they have altered or removed any curricular materials as a result of Section 11.1. We found that teachers' internalization of this legislation became manifest beyond what was required of the formal policy intentions or procedures.

In 1998, the Supreme Court of Canada ordered Alberta to include sexual orientation under the prohibited grounds for discrimination in Alberta's *Human Rights Act* (*Vriend v. Alberta*, 1998). Over a decade later, the province finally began the required legislative revisions to provide explicit protection for sexual orientation. Included in the revisions, Section 11.1 was created as a special provision regarding education; a trade-off meant to appease social conservatives in the province upset by the new protections for sexual orientation (Simons, 2014). It required educational institutions to provide prior written notice to parents or guardians when educational materials, programs of study, instruction, or exercises were to deal explicitly with religion, human sexuality, or sexual orientation. Parents or guardians then had the right to request their child be excluded from that portion of study. Section 11.1 was repealed in 2015 and replaced by Section 50.1 of the *School Act*.

This study was the first province-wide assessment of teachers' experience of Section 11.1. In this article we present the findings from a one-year study (2015–2016) in which we examined how this legislation has impacted teaching practices in Alberta by surveying practicing teachers from across the province to determine if, and to what extent, they had altered or removed any curricular materials as a result of Section 11.1. As background, we overview, within the context of Canadian jurisprudence, the lead up to and implementation of the parental opt-out clause, subsequent amendments, and the policies and procedures articulated by Alberta Education and by various school jurisdictions. Results indicate that most teachers surveyed (a) had not been aware that Section 11.1 had been repealed and replaced; (b) had received religious-based parental complaints regarding classroom content; and (c) had made subsequent, permanent changes to their classroom practice. The findings suggest that even after repeal, Section 11.1 has had a lasting, and damaging, impact on teachers' practice in Alberta.

Methodology and Theoretical Framework

In saying that Section 11.1 has had a damaging impact on teachers' practice in Alberta, and consequently a damaging impact on students, we assume a particular purpose for public education: to have students leave their K–12 education with a series of competencies "central to living in the 21st century" (Reid, 2014, p. 1). At its heart, we argue that this outcome depends on Dewey's (1929) notion of education's 20th century shift:

> The old center of the universe was the mind knowing by means of an equipment of powers complete within itself, and merely exercised upon an antecedent external material equally complete within itself. The new center is indefinite interactions taking place within a course of nature which is not fixed and complete, but which is capable of direction to new and different results through the mediation of international operations. (pp. 290–291)

It is not enough to simply know; students must also be able to work within complex and integrated frameworks. A large part of that need is brought on by living in an increasingly diverse society and dealing with the "wicked problems" (Buchanan, 1992) that such diversity presents. Competency now requires not only knowledge, but an ability to work towards solutions through a "diverse set of values, knowledge, and expertise" (Hipkins, Bolstad, Boyd, & McDowall, 2014, p. 33). Solving the complex problems in our world is difficult because doing so:

> is value laden, it usually requires those involved to adapt or radically change their world views, and it involves some groups giving up conditions which have historically been to their advantage. These are not things any of us do naturally or easily. People will not necessarily develop the capabilities for doing them without learning how and having opportunities to practice and develop them. (Hipkins et al., 2014, p. 33)

To this end, policy makers must construct and reinforce an understanding of public education in which what students learn is not a discrete set of outcomes to be checked off, where parental preference is a right to strike items off that list. Public education and the competencies need students to graduate with as a nexus of ideas, where knowledge is built as a community and parental preference is part of a discussion, not a veto. Section 11.1, as we demonstrate in this paper, runs contrary to this vision of public education; how are students expected to encounter and work with different and diverse values outside of school if they are prevented from engaging with such things within school?

With more frequent calls for educational reform, and with a political environment that seems to be growing progressively more populist and more reliant on emotion than fact, it becomes increasingly important to understand and begin to unravel the impact of policy choices. Section 11.1 provides an important lesson on the role policy makers have in ensuring education for social justice, inclusion, and participation in a liberal democracy, and the impacts those policy makers can have when they craft policy to gain political power.

This focus on "political points" is an excellent example of the pitfalls in creating and implementing education policy, and underscores the need for this research. Some areas of policy are under researched, providing little information for lawmakers to draw upon, but when such information is available, "decisions are often made based on impressionistic information, ideology or political persuasion" (Tatto, 2012, p. 2). Further, once implemented, policy is often subject to a variety of interpretations, which "essentially remak[e] policy at the ground level" (McSpadden McNeil & Coppola, 2006, p. 681).

In order to understand the effectiveness or impact of a policy, it is essential to understand "the critical issues that originate such policies" (Tatto, 2012, p. 2). Drawing upon policy impact analysis, we examined in this research not only the official version of the policy in question but also the "unofficial versions" (McSpadden McNeil & Coppola, 2006, p. 681). We considered how those at the school level receive and enact policy, recognizing the need to document the impact on teachers not simply because they are recipients of the policy, but "because they have insights unavailable to the formal policy process" (McSpadden McNeil & Coppola, 2006, p. 683). As such, the indicator of impact on teaching we used in this study was not whether Section 11.1 had the intended effect at a policy level, but rather, if it led to a change in classroom practice, what was the nature of that change, and has that change remained in place since Section 11.1 was repealed?

To understand how Albertans ended up with legislation so inimical to students' educational needs, and to see the impact of this legislation at a school level, we drew upon two key data sources: (a) documents pertaining to the creation of the legislation and (b) a survey of teachers in the province. These choices of data sources reflect the fact that policy effects do "not run in only one direction, [but rather] . . . the recipients of the policy in fact alter it as they carry it out" (McLaughlin, 1976, as cited in McSpadden McNeil & Coppola, 2006, p. 683). First, we

analyzed the legislation and related documentation, including debate and policy documents generated at the provincial and school board levels. This document analysis is divided into three periods: (a) background to the legislation; (b) implementation of the legislation, including guidelines for classroom teachers issued by Alberta Education and school boards; and (c) reactions to the legislation, particularly concerns regarding the legislation and its eventual repeal.

Second, we conducted a one-year province-wide assessment of this legislation five years after its implementation, building on preliminary evidence that indicated a substantial impact on teachers' classroom practice (Gereluk, 2013; Gereluk, Farrell, Donlevy, Patterson, & Brandon 2015; Wallace, 2012). We distributed an anonymous online survey to current teachers throughout Alberta who had taught in the province prior to September 2015, and thus had taught when Section 11.1 was in effect. To provide a cross-section of urban, rural, secular, and faith-based responses, we invited all 76 school divisions, including charter schools, to participate. Participation was voluntary, and responses did not track respondents' specific school division. One of the primary difficulties in the administration of this survey was the low level of respondents. A number of school administrators said that their teachers had survey fatigue and were not interested in participating in this research. Many of the separate, or faith-based, school administrators that we contacted declined participation, as they felt that Section 11.1 was not applicable to their institutions. It may be the case, though we cannot confirm this supposition without survey responses from religious-based schools, that notifications similar to the ones provided by Section 11.1 were already in place prior to the legislation, or it may be that those institutions had already removed subject areas similar the ones covered by Section 11.1. A number of elementary schools also declined to participate, believing that the classroom content covered for those ages did not fall under Section 11.1. It might be concluded from this lack of response that Section 11.1 had minimal impact in faith-based and elementary schools, or that schools declining to participate in the survey were generally unaware of the legislation and its potential ramifications for teaching practice.

Only seven school divisions granted research permission; all were secular and public. A total of 94 teachers representing a range of teaching experience and subject areas responded to the survey between September 2015 and April 2016. The survey comprised a series of demographic questions, such as years teaching and subject areas, and a series of questions related to Section 11.1, including respondents' understanding of Section 11.1, whether they had amended their teaching practice following its implementation, and if they were aware of the legislation's repeal in March of 2015 and subsequent changes to the *School Act.*

Findings

Document Analysis

Background to the legislation. Alberta delayed mandated legislative revisions to its human rights code for over a decade, following the Supreme Court of Canada's 1998 *Vriend* decision. Finally addressing the required changes in 2009, the Conservative Party introduced a series of measures through Bill 44 intended to improve the existing, but outdated, laws. The main legal issue Bill 44 needed to address was including sexual orientation under the *Alberta Human Rights Act*. Bill 44 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 or sexual orientation. (*Alberta Human Rights Act,* 2009, p. 3)

Bill 44 also introduced the contentious Section 11.1, also referred to as the parental opt-out. This opt-out was introduced by then-premier Ed Stelmach in an effort to "placate social conservatives upset by the addition of sexual orientation to Alberta's human rights code" (Simons, 2014, para. 4), despite almost no public pressure from parents to strengthen parental rights in regard to education (Libin, 2009, as cited in Alberta Teachers' Association, n.d., para. 5). During debates on Bill 44, Stelmach argued that "this government supports a very, very fundamental right, and that is parental rights with respect to education" (as cited in Legislative Assembly of Alberta, 2009a, p. 875). Furthermore, Stelmach argued that the amendments Bill 44 made to the *Alberta Human Rights Act* did nothing new. Rather, these amendments

> confirm rights that parents or guardians have already concerning the education of their children. Parents or guardians would have the right to exempt their children from courses of study, programs, or materials that include subject matter dealing explicitly with religious instruction, sexuality, or sexual orientation. This is already in the manual that the Department of Education has. This is simply putting it into the act. (as cited in Legislative Assembly of Alberta, 2009a, p. 875)

The protection of both human rights and parental rights presents a fundamental problem. The provision of explicit protection and the resultant constitutional right not to be discriminated against due to one's sexual orientation come into a value conflict with the statutory right of parents to be the chief determiners of their children's education, in so far as religious matters are concerned. Since the latter issue includes various faith-based understandings of what is appropriate human behaviour that may not be the same as a secular, or non-faith-based understanding, conflict can arise as the institutional presentation of sexual orientation is more than merely a pedagogical experience. The Alberta government appeared to create Section 11.1 in response to, at least in part, the concern that there was a potential conflict between these two sets of rights.

Although initially spurred by a desire to balance the conflict, the scope of parental rights the government was protecting was not to be limited to sexual orientation and human sexuality. During debates on the legislation, Stelmach indicated that the religious aspect of Section 11.1 was to have a much wider scope, and that it would "give parents the authority to exclude their kids from classes if the topic of evolution comes up" ("Evolution classes optional," 2009, para. 4). However, when asked by Member of the Legislative Assembly Brian Mason during question period about denying some children "a balanced, scientific, and objective education" (as cited in Legislative Assembly of Alberta, 2009a, p. 875), Stelmach denied his early claims regarding evolution classes, stating that "the proposed amendments are very clear" (as cited in Legislative Assembly of Alberta, 2009a, p. 875).

However, the proposed amendments might not be interpreted so clearly at the classroom level. First, there was no framework for what topics might fall under the scope of the legislation. During question period there was confusion regarding what would be considered "sexuality," or

"religion." Minister of Culture and Community Spirit Lindsay Blackett stated, "we don't have a definition that we are using [for religion]" (as cited in Svidal, 2009b, para. 6), and added that sexuality was "common sense" (as cited in Svidal, 2009b, para. 8). Minister of Education David Hancock clarified that the curriculum referred to "sex education" (as cited in Svidal, 2009b, para. 8).

Member of the Legislative Assembly Brian Mason pointed out broader issues of censorship during debate on the legislation. Regardless of how the Human Rights Commission might rule on cases, Mason argued the legislation would 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. (as cited in Legislative Assembly of Alberta, 2009b, p. 1163)

Consequently:

> The handful of parents who might avail themselves of this clause are going to influence the education of all of the children, including the children of parents who want their children to be present for those discussions. It will change how education is delivered in the classroom, however subtle, and that is of great significance. (as cited in Legislative Assembly of Alberta, 2009b, p. 1163)

This position suggested at the divisive nature of the bill, highlighted by Laurie Blakeman, human rights critic and official opposition house leader. She emphasized that protecting parental rights to religious faith should not mean that "faith is then used to remove a child from the teaching that all other children are getting in that system" (as cited in Alberta Legislative Assembly of Alberta, 2009b, p. 1165); doing so would compromise teachers' ability to guarantee the overall quality of education in Alberta. Blakeman argued that by removing children from the classroom, the government effectively undermines teachers' ability to address complex, real-world issues, to understand their complexity, "to be able to put forward their point of view with confidence, with some factual backup to it, and be able to argue those ideas out in a public context" (as cited in Legislative Assembly of Alberta, 2009b, p. 1165). Removing children from controversial issues in the classroom would be antithetical to that goal.

This debate reflected the fact that Section 11.1 would create fundamental change in Alberta's education system. Critics argued that it was doing so in accordance with parental need, rather than a "specific philosophy of education" (Dickey Young, 2015, p. 47). Mason argued that Bill 44 ought to be put on hold until relevant stakeholders could be consulted on the legislation and its potential impacts (Legislative Assembly of Alberta, 2009b) Blakeman pointed out that four key education groups in Alberta—the Alberta Teachers' Association, the College of Alberta School Superintendents, the Alberta School Boards Association, and the Alberta School Councils' Association—stood united in opposition to the bill (Legislative Assembly of Alberta, 2009b).

Considering no concerns had been expressed with the prior system outlined under the *School Act*, opponents questioned the need for the legislation. Blakeman pointed out the obvious misplacement of the legislation as part of the *Human Rights Act*, rather than the *School Act*. The

Minister of Education and the Minister of Culture and Community spirit felt there were more effective ways to address concerns about parental choice in education, even though, due to their party, they were obligated to support Bill 44. Mason argued that the introduction of this legislation was primarily the result of pressures from socially conservative groups, who did not represent the majority opinion in Alberta, and who had "hijacked" government caucus (as cited in Legislative Assembly of Alberta, 2009b, pp. 1163).

Despite the array of concerns raised during question period, Bill 44 was passed. The resultant legislation required educational institutions to provide notice to the parent or guardian of a student when educational materials, programs of study, instruction, or exercises were to deal explicitly with religion, human sexuality, or sexual orientation. Parents or guardians then had the right have their child opt out from those activities or lessons. The fact that enactment of this legislation was delayed to give teachers and administrators more time "to understand the implications" (Dickey Young, 2015, p. 48) indicates that, rather than simply restating existing rights, Section 11.1 was making fundamental changes to education.

Stelmach was correct in that previous legislation already granted parents the right to withdraw their children from instruction (*School Act,* 2000), except the wording of Section 11.1 as part of the *Alberta Human Rights Act* was fundamentally different from the previous parental rights under the *School Act* in two key ways. First, Section 11.1 shifted the onus from parents to withdraw their children to teachers to provide prior written notice. Second, as part of the *Human Rights Act,* failure to provide notice exposed teachers to the risk of having a complaint filed against them with the Alberta Human Rights Commission. Here the contested nature of Section 11.1 comes into play, and although it was arguably the government's answer to balancing competing rights, how that delicate balance was to play out involved the creation of policies and procedures, as we turn to in the next section of this paper.[1]

Implementation of legislation. Following the proclamation, Alberta Education began the task of interpreting the obligations of teachers, schools, and boards in relation to Section 11.1. Its *Guide to Education* (Alberta Education, 2010) outlined the roles and responsibilities of interested parties in the province. In certain subject areas, the contested issue was stated and commonly referred to an explicit theme regarding human sexuality or religion. Table 1 specifies topics within broader subjects that Alberta Education noted as requiring prior written notice.

[1] The Supreme Court of Canada has recently determined that balancing religious rights and the state's interest in public education is indeed a delicate balance. In the Drummondville Case (*S. L. Commission scolaire des Chênes*, 2012), the issue of parental religious rights and the state's interest in public education was held in favour of the state's overriding interest. Justice Deschamps, speaking for the majority of the court, said, "Parents are free to pass their personal beliefs on to their children if they so wish. However, the early exposure of children to realities that differ from those in their immediate family environment is a fact of life in society. The suggestion that exposing children to a variety of religious facts in itself infringes their religious freedom or that of their parents amounts to a rejection of the multicultural reality of Canadian society and ignores the . . . government's obligations with regard to public education. Although such exposure can be a source of friction, it does not in itself constitute an infringement of s. 2(a) of the *Canadian Charter*." (para. 40)

Table 1

Topics Requiring Prior Written Notice

Course	Topic	Rationale
Aboriginal Studies 10	Theme II: Aboriginal Worldviews	Religion
Career and Life Management (CALM)	Human sexuality	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	Human sexuality
Health and Life Skills (Grades 7, 8 and 9)	Human sexuality	Human sexuality
Religious Ethics 20	Whole course	Religion
Religious Meanings 20	Whole course	Religion
World Religions 30	Whole course	Religion

Addressing the earlier debates on the scope of the legislation, Alberta Education (2010) deemed other subjects to be unaffected, such as social studies, biology, English, and physical education. The rationale for not including them rested on the degree to which religion was "primarily" *and* "explicitly" used in the classroom; in these cases, Alberta Education judged that although religion, human sexuality, or sexual orientation may be addressed within other subject areas and may be explicitly taught, it was not the primary outcome. For a subject to address these topics explicitly, "there must be no question that the subject matter is intended to address religion, human sexuality, or sexual orientation" (Alberta Education, 2010, p. 71). To note this distinction, the *Guide to Education* includes an example of topics addressed in social studies: "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" (Alberta Education, 2010, p. 72).

Alberta Education provided its rationale, common questions, and answers to the implications of Section 11.1 on its website; most school boards provided similar information on their district websites, along with a hyperlink to the Alberta Education website. The information provided by school boards commonly had a paragraph related to the implementation of Section 11.1. The emphasis, however, tended to focus on three aspects:

1. The requirement that parents must provide written notice should they request their child to opt out of a lesson;
2. The procedures that schools would take to notify parents; and
3. The alternative instruction that would be provided to children who opted out. (Calgary Board of Education, 2011; Edmonton Public School Board, 2010; Elk Island Public Schools, 2010)

Although most urban school boards put the necessary procedural information on their websites, other school jurisdictions did not provide such an explicit response on their websites, particularly those in rural school jurisdictions. Separate school systems incorporated Section 11.1 but placed it within the underpinning philosophy whereby parents, by allowing their children to attend a Catholic school system, had already agreed to the values inherent in the Catholic faith. As such, the wording of the preamble to the Calgary Catholic School District's (2012) response was altered to include the following: "Pursuant to Section 11.1 of the Alberta Human Rights Act please be advised that you are enrolling your child in a school district where religious instruction, exercise and instructional materials are used and that religion permeates the school program" (p. 1). Other topics that went beyond the Catholic faith, and that still addressed human sexuality and sexual orientation, were to be dealt with in the customary manner; this required notifying parents in September, as had been done prior to the enactment of Section 11.1.

Where students attended a school that operated both as a public school and a Catholic school, a student could opt out of Catholic religious instruction if the child had declared that he or she was a non-Catholic student attending the school. For instance, the Conseil Scolaire Centre-Nord is a francophone Catholic school in the Edmonton region that caters to both Catholic and non-Catholic students. In this case, "non-Catholic students may be exempted from religious instruction and liturgical celebrations" (Conseil Scolaire Centre-Nord, 2011, p. 2).

After a 1-year grace period to develop protocols and processes across the province, in September 2010, Section 11.1, commonly known as the parental opt-out clause, was implemented in schools across Alberta. A disconnect then emerged between formal policies at the central administrative level and the informal practices that teachers might self-impose (Gereluk & Farrell, 2014). Initial anecdotal evidence suggested that teachers had begun practicing self-censorship in their classrooms as a result of Section 11.1, above and beyond the guidelines developed and implemented by their school boards (Gereluk, 2013; Gereluk & Farrell, 2014a; Wallace, 2012). This evidence refuted the idea that all teachers were acting out of ignorance of the legislation; rather, they were acutely aware of the legislation and the ability for parents to file complaints under the *Alberta Human Rights Act.* Whatever documentation had been produced at the administrative or even provincial level, despite outlining specific course content and units affected by Section 11.1, it had still not inoculated teachers against complaints in other fields or subjects (Wallace, 2012).

Reaction to the legislation. Public opposition to the law was widespread, both leading up to its creation and following its implementation (Sheldon Chumir Foundation for Ethics in Leadership, 2011). Opposition to the law took three primary forms: (a) criticisms of the breadth of the law's potential application, (b) questions about the potential legal difficulties surrounding the enforcement of the law, and (c) fear of unintended consequences of the law, such as self-censorship by teachers.

The first concern stemmed from that fact that what could be considered controversial under Section 11.1 was 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. This could include evolution, as recognized by Stelmach during the introduction of the legislation (McKay-Panos, 2009). Other objectionable content might include a history lesson on the Reformation, or a course on Shakespeare (Sheldon Chumir Foundation for Ethics in Leadership, 2011).

This breadth raises the question of what role a parent's belief should have in his or her child's education. There is a vast collection of literature going back 60 years on the value of a well-rounded democratic education that provides a variety of perspectives. In *Brown v. Board of Education* (1954), social science evidence stressed that desegregation would benefit both African American and white children, and more recent studies have shown that students gain educational benefits from diversity, being better able to "participate in a heterogeneous and complex society" (Gurin, Nagda, & Lopez, 2004, p. 19). This standpoint is reflected in the Alberta curriculum; the preamble to the social studies curriculum states that students will "understand historic and contemporary issues, including controversial issues, from multiple perspectives" (Alberta Education, 2005, p. 2).

A series of Supreme Court cases have also emphasized this right to a diverse educational experience. In 2002, two concerned parents brought a complaint against the Surrey School District for not including educational materials which represent a broad range of families. The school board felt that children at the kindergarten and Grade 1 level should not be

> exposed to ideas that might conflict with the beliefs of their parents; that children of this age were too young to learn about same-sex parented families; and that the material was not necessary to achieve the learning outcomes in the curriculum. (*Chamberlain v. Surrey School District No. 36*, 2002, p. 1)

The Supreme Court of Canada overturned this decision, stating a

> requirement of secularism means that the school board must consider the interests of all its constituents and not permit itself to act as the proxy of a particular religious view held by some members of the community, even if that group holds the majority of seats on the board. (*Chamberlain v. Surrey School District No. 36*, 2002, para. 27)

A similar argument was put forward in the Supreme Court by Justice La Forest in *Ross v. New Brunswick School District*:

> A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through the

> educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. As the Board of Inquiry stated, a school board has a duty to maintain a positive school environment for all persons served by it. (1996, para. 47)

In 2008, Quebec instituted a mandatory course on ethics and religious culture, requiring teachers to teach a positive representation of same-sex relationships as well as survey a variety of ethical and religious beliefs. Parents challenged this mandated curriculum, stating that it violated the freedom of religion protected under Section 2 of the *Canadian Charter of Rights and Freedoms* (*S. L. v. Commission scolaire des Chénes*, 2012). The Court ruled that the suggestion

> that exposing children to a variety of religious facts itself infringes their religious freedom or that of their parents amounts to a rejection of the multicultural reality of Canadian society and ignores the Quebec government's obligations with regard to public education. (p. 6)

Reinforcing this idea was a 2012 ruling, where the Supreme Court recognized that "the reason children are entitled to an education is that a healthy democracy and economy require their educated contribution" (*Moore v. British Columbia*, 2012, para. 5).

The second form of opposition to the law centered around the potential legal difficulties involved in enforcing the legislation. Complaints filed under the law to date are not indicative of a successful complaints process. Previous legislation already granted parents the right to withdraw their children from instruction (*School Act,* 2000). The introduction of Section 11.1, however, shifted the onus from parents to withdraw their children to teachers to provide advance written notice. Failure to provide notice exposed teachers to the risk of having a complaint filed against them with the Alberta Human Rights Commission. Three such complaints were filed while Section 11.1 was in effect.

In 2012, two parents in Morinville filed separate complaints under Section 11.1 against the Greater St. Albert Catholic Regional Division No. 29 (Dafoe, 2012a), and in 2014 an Edmonton mother and daughter filed complaints against the Edmonton Public Board (Simons, 2014). In each of these instances, the complaints emerged not from a religious bias, but from a desire for a secular educational environment. They also represent instances where Section 11.1 was not fully carried out in the provision of advance written notice to parents.

The two complaints from Morinville emerged from the schooling situation in the town. Morinville had only a public Catholic high school, with no secular or Protestant high schools of any kind (Hammer, 2011). All public schools surrounding Morinville are either Catholic or Protestant, leaving no option for secular education within the town, even though only 30% of the population identifies as Catholic (Keeping, 2011). The Catholic Board stated that they were not willing to hand over the keys to one of its four schools within Morinville to have it converted to a secular educational institution (Hammer, 2011). It would have been possible for children to be bused to the nearby Sturgeon School District, but for parents this option involved a longer commute and a school board which "cuts us out of their [the children's] education . . . [because] as non-residents of the school district we wouldn't be able to vote for our trustee" (Hammer, 2011, p.4). Excluding children from religion classes would not address the matter, as "in a Catholic school, the entire curriculum is permeated with Catholic theology" (Hammer, 2011, p.

2). This situation, to the parents filing the complaints, created a two-tiered system where non-Catholic children were inherently discriminated against and had to be "indoctrinated" into the Catholic faith (Dafoe, 2012c, p.6).

However, in January 2012, the Alberta Human Rights Commission rejected both complaints. Although the commission recognized that "the submissions have experiences that do cover the protection as indicated in Section 11.1" (as cited in Dafoe, 2012b, p. 2), it determined "that [it] is more appropriate . . . [to have the children's] rights upheld in another forum" (Dafoe, 2012b, p. 2), referring the parents who filed the complaints back to the original school board. Following continued inaction on behalf of the Catholic school district in the town and continued advocacy from parents, in July 2012, then Education Minister Jeff Johnson transferred École Georges P. Vanier School in Morinville to the secular Sturgeon School Division, though the other schools in Morinville would continue to be operated by the Catholic board (Dafoe, 2012c).

The third instance in which a complaint was filed under Section 11.1 comes from Edmonton, where a teenager and her mother filed a complaint alleging that the Edmonton Public School District had used a Christian fundamentalist abstinence education program which infringed upon their rights as non-Christians (Simons, 2014). The daughter, Emily, had received permission from her mother to attend Career and Life Management (CALM) sexual education classes. Emily texted her mother during class to inform her that students were being taught sexual education by an anti-abortion group from the American-based Pregnancy Care Centre. The centre provides free abstinence education to approximately 60 schools in Edmonton at the junior and senior high levels each year. According to Emily, the presenter "did a lot of slut-shaming . . . and pointed out the guys as horn-dogs" (as cited in Simons, 2014, para. 7). When asked about same-sex couples, the presenter is reported to have said, "We're not here to discuss that" (as cited in Simons, 2014, para. 9).

Emily's mother, Kathy, asked that her daughter be excused from the next presentation, and was told this was not possible without academic penalty (Simons, 2014). So, Kathy attended the classes with her daughter. They both acknowledged no explicit references to Jesus or God, although the materials taught were "deeply rooted in Christian doctrine" (Simons, 2014, para. 10), espousing evangelic values. Kathy began a petition and wrote to trustees; meanwhile, the board endorsed the center's sexual education curriculum. After Emily's graduation, Kathy filed a complaint under Section 11.1, arguing that the board had "infringed her parental rights by failing to give her advanced noticed of the course content, then refusing to let her remove her daughter from the class without academic penalty" (Simons, 2014, para. 13).

The Alberta Human Rights Commission agreed to review this complaint, but it does not comment on complaints in progress. Members of the Edmonton Public School Board then attended a lecture by the Pregnancy Care Center, saying it was "a scientifically sound presentation, which was inclusive, respective of individual differences and without religious content" (Superintendent Darrel Robertson, as cited in Simons, 2014, para. 16). The school district began notifying parents of the lectures, but the letters distributed did not mention the Center's Christian mission or its pro-life, anti-abortion advocacy. In July 2014, the board instructed principals to stop using the group. At the time, Kathy and Emily still intended to move forward with their complaint, desiring parents to be notified of all guest speakers and have the option to opt out (Canadian Press, 2014).

The legal difficulties involved in enforcing the legislation, reflected by the above cases, are closely tied with the third and final concern: the unintended consequences of the legislation. Edmonton public school trustees put forward a motion to send a letter to the Government of Alberta to repeal Section 11.1 on the basis that it pertains to education rather than human rights, with Trustee Heather MacKenzie arguing that the legislation impedes teachers' ability to develop student understanding of complex issues ("Edmonton schools urge repeal," 2011). The motion was carried in a five to three decision on December 13, 2011 (Dykstra, 2011). Similar resistance continued to be heard from the Alberta Teachers' Association, which contended that teachers are more hesitant to talk about these issues despite the parameters of topics that are primarily and explicitly taught in the classroom. Frank Bruseker, president of the association at the time, argued that such hesitation undermines public education (Svidal, 2009a).

Initial indicators suggested that teachers had already begun practicing self-censorship in their classrooms, shying away from any material that may be deemed controversial (Gereluk, 2013; Gereluk, Farrell, Donlevy, Patternson, & Brandon, 2015). This potential for curricular censorship is at odds with Section 3 of the *School Act,* which requires all educational programs to reflect the diversity and heritage of society in Alberta; promote respect and understanding; and not engender or promote intolerance, racism, or forms of persecution based on personal beliefs and values. Whereas under the *School Act* a parent's decision to remove a child from instruction primarily impacted only that child, a teacher's practice of self-censorship affects all children in the class, who are subjected to the impact of a circumscribed education. As a subset of this vein of curricular censorship, a number of groups have called Section 11.1 inherently homophobic, maliciously targeting nonheterosexual students and making schools unsafe spaces for members of the LGBTQ community by creating an environment in which teachers will not even mention anything related to nonheterosexuality (Albertans for Safe and Inclusive Schools, 2014; Keeping, 2014).

Opposition to the legislation was not confined to citizens' critiques. Repeal of Section 11.1 was part of Allison Redford's 2011 campaign promises; she expressed concern that the legislation meant that "kids in school. . . are not getting the info and support that they need to have to live healthy lives" (as cited in Wood, 2012, para. 21). A year after her successful election as premier, she had made no efforts to repeal the legislation (Wood, 2012). In October 2014, Bill 202, a private member's bill, included the removal of Section 11.1 (Ibrahim, 2014). In March 2015, Section 11.1 was repealed and replaced with Section 50.1 of the *School Act* and Section 58.1 of the *Education Act*[2] through Bill 10 (Legislative Assembly of Alberta, 2015).

These amendments were introduced as a minor aspect of Bill 10, which was primarily presented to improve protections for LGBTQ students in schools through Gay-Straight Alliances (GSAs) and antibullying initiatives (Legislative Assembly of Alberta, 2014). Bill 10 did move the jurisdiction of complaints from the Alberta Human Rights Commission to individual school boards. Bill 10 also changed the wording of the first section of the legislation to remove "sexual orientation," although the requirement for prior written notice was not removed (Legislative

[2] The *Education Act* received Royal Assent in September 2012 and was to replace the *School Act*. Following a 2015 review of the *Education Act* it was determined further discussion was required before implementing the new legislation. The *Education Act* has not been implemented for the 2017–2018 school year, and further discussion is expected. In the interim, the *School Act* is the main statute for education in the province (Alberta Education, 2016).

Assembly of Alberta, 2014). These changes were intended to address concerns that had been raised about Section 11.1; however, many of them still applied to the new legislation. During debate the bill's sponsor emphasized that human sexuality and sexual orientation ought to be considered distinct areas and topics (Legislative Assembly of Alberta, 2014, p. 301), but it could be argued that sexual orientation is a subset of human sexuality and is subsequently still covered by the new legislation (Veron & Burton, 2014). Further, as few complaints under Section 11.1 were dealt with by the Human Rights Commission and were rather dispatched by individual school boards, these amendments could be seen as simply codifying the existing state of affairs (Veron & Burton, 2014).

Survey Results

Since the implementation of Section 11.1 in September 2011, perceptions of the impact it has had on teachers have varied. In this section, we note some general patterns based on participant responses to the survey from across the province.

Of those teachers surveyed, 56.3% identified a lesson that "might have fallen under the [scope] of Section 11.1." Of those respondents who did identify a lesson that they felt was under the scope of Section 11.1, 75.8% identified lessons on human sexuality, either as part of science or health curricula. Other subject areas and topics identified included religion, evolution, reproduction, literature and film content, and history. Some teachers also identified school activities, rather than classroom lessons, that they felt fell under the legislation, primarily holiday observances and celebrations as well as antibullying initiatives within the school.

For those who identified a lesson that they felt was within Section 11.1, the majority of teachers, 67.7%, provided written notification with regards to the specific lesson, rather than a general notice at the beginning of the year. Only 17.6% of teachers provided a general, blanket notification. All specific lesson notifications were for classes that covered human sexuality. General notifications provided at the beginning of the year included ones for English, social studies, and science, where teachers identified lessons on history, religion, and evolution that they felt fell under the purview of Section 11.1. Teachers also used other forms of notification for parents. These included a notice posted on the online classroom, D2L; notices in the course outline; and phone calls or direct discussions with guardians. All but one alternative method of communication was used in conjunction with either a general or specific written notice to parents.

Of those teachers who identified a lesson that fell under Section 11.1, only 6, or 6.6% of the total respondents, made changes to curricular resources that they used in the classroom. These changes included providing alternative novels for students to work with, exempting students from classroom activities and providing alternative lessons for the subject area, and using alternative examples in class, such as the civil rights movement instead of the gay rights movement in Canada in Social Studies 30.

Some respondents, 12.68%, said community members had communicated concerns to them regarding classroom content that those community members felt fell under Section 11.1. These included parents reviewing texts in high school English for what they deemed was questionable content, having concerns about the existence of a GSA in the school, having concerns about transgender washrooms, not believing in evolution, expressing that sexual health education was "not the school's job," believing that the teacher deviated from the curriculum in answering a question on sexual health, and wishing to exempt children from sexual education for

religious or cultural reasons. Respondents also indicated that fellow teachers had expressed concern to them regarding the legislation. These discussions between teachers fell into four distinct categories:

1. Discussions over the scope of Section 11.1, both in terms of content and what constituted indirect or incidental references under the legislation;
2. Encounters with parents who expressed concern regarding topics in the classroom and whole school;
3. Debates over the need to provide blanket notifications for literature in high school English; and
4. Concerns about punishment for covering perceived impermissible themes in their classrooms.

One respondent appreciated the dialogue the legislation had created between parents and teachers. Others expressed concern regarding the classes students were being opted out of, indicating that parental belief should not circumscribe education that might be valuable for the child in question. One respondent wrote: "It seems quite odd that such codified laws are permitted to exist in a modern democracy. It is even odder that we permit them to harm the education of our youth." Of particular concern in the results was exemption from CALM, a mandatory course in Alberta. In some schools, students were exempt only from the human sexuality portion for religious reasons. Other schools allowed parents to use religious grounds to exempt their child from the entire course. Some respondents expressed concern that this "exempted [students] from a course that also deals with other important aspects of future living."

Some respondents indicated that prior to the survey, they had not been aware of Section 11.1, and expressed concern that their school board had not informed them of the requirements so that they might "send appropriate forms and letters home." Teachers also expressed concern that the guidance provided by their school boards had not been updated to reflect changes made to the legislation. Only 28.17% of respondents were aware that Section 11.1 had been repealed in 2015, and 5.63% indicated that even though the legislation had been repealed, they would keep in place changes they had made under the legislation (but did not indicate what these changes were).

These research findings support prior anecdotal evidence that suggested (a) a fundamental disconnect between policies and classrooms, (b) fear of prosecution under the legislation, and (c) misunderstandings regarding the legislation's applicability. Teacher concerns regarding communication between school boards and teaching staff supported prior anecdotal research that indicated a disconnect between central administrative politics and teachers' classrooms (Gereluk & Farrell, 2014). Concerns that were directly communicated to teachers, such as those regarding transgendered washrooms or the existence of a GSA in the school, indicate that parents and guardians in the community did not understand the scope and applicability of Section 11.1. This finding is also seen in the concern regarding answering a student's question in health class. Section 11.1 applied only to preplanned classroom content. It did not include other aspects of the school, such as clubs, nor did it include incidental references that came up in the course of classroom conversation or discussion.

Contrary to the expectations of religious-based complaints that policy makers voiced during the drafting and implementation of Section 11.1, all the formal complaints were in

support of secular learning environments. It could be argued that Section 11.1 was primarily able to protect religious neutrality, which "is now seen by many Western states as a legitimate means of creating a free space in which citizens of various beliefs can exercise their individual rights" (*S. L. v. Commission scolaire des Chênes*, 2012, p. 16). In *S. L. v. Commission scolaire des Chênes* (2012), the Supreme Court ruled that

> state neutrality is assured when the state neither favours nor hinders any particular religious belief, that is, when it shows respect for all postures towards religion, including that of having no religious beliefs whatsoever while taking into account the competing constitutional rights of the individuals affected. (para. 32)

Looking just at the cases filed under Section 11.1, it would appear that fears of religious-based censorship in the classrooms did not come to pass and that the impact of Section 11.1 was rather benign. However, these formal complaints are not indicative of the legislation's total effect. Although Section 11.1 may have created a space for dialogue on a child's education, as indicated by some teachers in the survey, most data pointed to limited dialogue, pervaded by fear of parent complaints, silent censorship, and administrative repercussions. Indeed, anecdotal evidence, supported by our findings, emphasizes that parental complaints often emerged and were dealt with by the school or board, not by the Alberta Human Rights Commission. In one instance, a complaint was filed with the principal and then with the Calgary Board of Education following a film rated 14A (suitable for 14 years and older) being played in high school class in which all students were above that age. As a result, a letter of reprimand was placed on the teacher's file, and the English department conducted a review of "questionable content" in the materials presented in class (Wallace, 2012, para. 4).

Many literary works, including ones that are listed on the approved resources list by Alberta Education, potentially fall under the perceived scope of Section 11.1 and Section 50.1. This includes works such as Chaucer's *Canterbury Tales*, Timothy Findley's *The Wars*, J. D. Salinger's *Catcher in the Rye*, or Ken Kesey's *One Flew Over the Cuckoo's Nest.* These works were still subject to parental complaint, where they had not been prior to the implementation of the legislation (Wallace, 2012). Combined with the survey responses to parental complaints regarding nonclassroom activities in school, data indicate that Section 11.1 legitimized the critique of classroom materials based on parental perception and belief, rather than a central educational philosophy in the province.

This is evidence that supporters of Bill 44 were incorrect. The scope of Section 11.1, and subsequently Section 50.1, is neither "clear" (Legislative Assembly of Alberta, 2009b, p. 875) nor "common sense" (Svidal, 2009b, para. 8). Indeed, parental objections to classroom content cannot always be assumed to be reasonable, nor could it be assumed that there was a common understanding in the province of what fell under the scope of "religion," "human sexuality," and "sexual orientation." Policy guidelines developed by Alberta Education were evidently ineffective in communicating what curriculum portions fell under the purview of the legislation. Part of this disconnect is reflective of diverse views in the province and relates to the socially conservative push for the legislation in the first place. While some might be sympathetic to parents' (and others') religious freedoms, a better approach might be to take the Supreme Court of Canada's lead in preserving equality rights rather than to capitulate to one faith group to the disadvantage of other marginalized populations. However, this legislation highlights the tension

between parental freedoms and broader civic dispositions that may be necessary within a liberal democratic society.

Though any ongoing censorship may be attributed to individual teachers, schools, or boards, the fact that such censorship was spurred by Section 11.1 subverts the state's legitimate role in providing a diverse educational experience for all citizens. Section 11.1, and subsequent legislation, moves away from trusting teachers' professional judgement and common sense when selecting classroom materials (Wallace, 2012). This stance erodes teachers' professional autonomy and leads to the false assumption that all parental requests will be reasonable and rational (Legislative Assembly of Alberta, 2009b, p. 1163). The concerns raised by some teachers have an important place in the dialogue surrounding this legislation, and reflect concerns expressed during initial debate over whether parental concern is sufficient to circumscribe the education of Alberta's students.

Although the number of teachers impacted by Section 11.1 may be small, measured in terms of those who changed curricular content and provided notification to parents, it can in no way be considered acceptable. The implications are significant in nature when those teachers directly impact the number of students they may have under their instruction, the ramifications of Section 11.1 grow, particularly if you consider the impact year over year.

Even if the impact of Section 11.1 were minimal and the anecdotal evidence reported was not representative of teaching experiences across the province, and even considering the usage of the legislation to defend secular, or non-faith-based, instruction, Section 11.1 still presents an unnecessary level of intervention within the classroom. Section 11.1 and its legacy are problematic and reflect the concerns voiced when the legislation was being implemented: the ineffectiveness of its enforcement, the limited efficacy of the complaint process outlined by the legislation, and concerns of self-censorship. The complaints raised under the legislation could have been addressed through preexisting legislative channels that do not circumscribe the education of students through educators' fear of complaint and self-censorship

Conclusion

Policy makers are important stewards of our education. The policies they make reflect the privilege of their position and their immense power to implement their own vision of education, whether that vision is based in educational research or is simply a means to a political end. It is imperative that educational policy does not succumb to the latter, as the legislation surrounding the parental opt-out in Alberta has done.

This body of legislation introduces the idea that it is acceptable to debate the inclusion of certain topics in schools, which runs contrary to the well-established aim in Canada of educating students for their full participation in society. Legislating the requirement that parents be provided advance written notice creates a state-sanctioned norm that censorship of certain topics within public institutions in acceptable, and further undermines the professional judgement of teachers as educators. This impact may be substantially harder to quantify but is reflected in some of the survey responses we collected, such as parental opposition to the very existence of GSAs in schools.

If the information students have access to in their classrooms has been circumscribed due to the impact of Section 11.1, it is not possible for schools to provide an effective foundation for

citizenship in an inclusive society. If this legislation has led to teacher self-censorship, Alberta as a province is rejecting the diversity that is a central tenet of Canadian democracy. If a teacher has become afraid to discuss LGBTQ issues in a classroom, a student who identifies as a member of that community cannot reasonably be expected to participate in the classroom. If educators are censoring references to religion in Shakespeare, students cannot be expected to respect the diversity in Canadian communities. Our data indicate that Section 11.1 has undermined, in these ways and others, the open and responsive communication that is essential for Alberta's classrooms. We conclude that such legislation must be addressed to ensure the future success of the province's students.

In many ways, the legacy of Section 11.1 indicates a fundamental shift in Alberta education. It has introduced the idea that teachers lack the professionalism to decide what is best for a child's education, that education is something from which parents can pick and choose, and that it is easier and now preferable to avoid controversial topics on our classroom. This runs contrary to the fundamental values of public education in a liberal democracy. It also points to a larger debate on how we ought to balance individual rights and freedoms within a society; the evidence to date suggests Section 11.1, and legislation like it, is not the way to do so.

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Critical Education

criticaleducation.org
ISSN 1920-4175