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## Educational Malpractice? Human Rights, Censorship, and the LGBTQ+ Community in Ontario's Health and Physical Education Curriculum

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### ABSTRACT

The announcement of a new Health and Physical Education curriculum in 2010 by the Liberal McGuinty government resulted in considerable controversy in Ontario. Key religious groups, as well as socially and politically conservative groups, opposed the inclusion of queer-positive content in public education. This opposition ultimately led to the shelving of the proposed curriculum. However, under the Liberal Wynne government, a version similar to the original 2010 curriculum has been taught in schools since September 2015. This paper examines the struggle since the 1960s for curricular inclusiveness of the LGBTQ+ community in the Health and Physical Education curriculum document, and the arguments that have been used to censor the LGBTQ+ community. Ultimately, it was the Charter of Rights and Freedoms and the Ontario Human Rights Code that prevented censorship in education. Human rights legislation was used to uphold civil rights in both the Catholic and public school systems and rose above the political decision-making that had censored the LGBTQ+ community.

### RÉSUMÉ

L'annonce d'un nouveau programme d'études en santé et en éducation physique, en 2010, par le gouvernement libéral McGuinty provoqua une énorme controverse en Ontario. Des groupes religieux fondamentalistes ainsi que des organismes sociopolitiques conservateurs se sont opposés à l'inclusion de contenu sur l'homosexualité dans les programmes d'enseignement public. Cette opposition conduisit à une mise au rancart du programme. Cependant, sous le gouvernement libéral Wynn, une version similaire au programme original est enseignée dans les écoles depuis septembre 2015. Cette étude s'intéresse à la lutte — en marche depuis les années 1960 — pour l'inclusion des membres de la communauté des LGBTQ+ dans les programmes d'études en santé et en éducation physique, ainsi qu'aux arguments utilisés pour censurer cette collectivité. Finalement, ce fut la Charte des droits et libertés et le Code des droits de la personne de l'Ontario qui empêchèrent la censure en éducation. On eut recours à la législation sur les droits de la personne pour soutenir les droits civils autant dans le système des écoles catholiques que dans celui des écoles publiques et supplanter les objections politiques qui censuraient les LGBTQ+.

### **The 2010 Health and Physical Education Curriculum**

The announcement of a new Health and Physical Education curriculum in 2010 for grades 1–8 by the Liberal McGuinty government led to a tumultuous time for the LGBTQ+ community in Ontario. The proposed curriculum was to have included gender identity and sexual orientation and would have gone a long way towards challenging institutionalized heterosexism and homophobia. However, key religious groups, as well as socially and politically conservative groups, opposed the inclusion of queer-positive content in public education, which led to a backlash against the curriculum and the LGBTQ+ community. Opposition from these groups, initiated within three days of the release of the curriculum document, ultimately led to the proposed curriculum being shelved. This was a resounding defeat for inclusive education as censorship prevailed. According to the *Toronto Sun*, “Premier Dalton McGuinty’s lightning retreat caught even his own caucus with its pants down Thursday.”<sup>1</sup> A *Globe and Mail* columnist stated that someone should have taught Mr. McGuinty that he has a spine.<sup>2</sup>

However, a version of the Health and Physical Education curriculum very similar to the original 2010 curriculum has since been introduced to the public by the Liberal Wynne government and has been taught in schools since September 2015. This version mandates classroom discussion of sexual orientation, gender identity, and homophobia, and is a much-needed improvement—especially considering that the Health and Physical Education curriculum documents were last updated in 1998.<sup>3</sup> As a recent series of LGBTQ+ educational resources produced by the Canadian Teachers’ Federation highlights, homophobia and heterosexism oppress LGBTQ+ students and can lead to prejudice, discrimination, and even acts of violence in the educational system, which is still largely heteronormative.<sup>4</sup> Despite the curriculum’s goals of creating a dialogue and building awareness of these issues—which would lead to a safer, more inclusive environment—there has still been a great deal of opposition to this curriculum.

In a liberal country like Canada, democracy is based on the idea that people know what is best for themselves, and censorship is based on a paternalistic principle. This is why opposition to the inclusion of the LGBTQ+ community in public education has come from more conservative forces than the Canadian state itself. The goal of censorship is to make “something or somebody invisible, that is, to make expression by or about them disappear... [I]t involves, for legal purposes, the state or some organization or individual with state like powers.”<sup>5</sup> As Shaheen Shariff and Michael Manley Casimir assert, censorship at its core, “inevitably involve[s] the idea of power. Censorship occurs when bureaucrats, administrators, educators and politicians abuse their power, or are influenced by others who use that power for their own interests. In the school context, it involves the power exerted by one group to decide what the children of others will learn.”<sup>6</sup> As the history and sociology of education has revealed, schools are involved in hegemonic social and cultural reproduction, and the knowledge disseminated in schools is given privileged status over other forms of knowledge. Due to the role of the state, legitimacy is conferred on educational practices and

knowledge that is incorporated within these formal structures.<sup>7</sup> Furthermore, the state is expected to act as an arbiter among competing groups and interests, since “schools operate within an ideology of value neutrality in the sense that the curriculum is supposed to convey beliefs and knowledge representative of society as a whole, [and their] apparent objectivity is reinforced by the dismissal of ideas that are seen to represent overtly the views of ‘special interest groups.’”<sup>8</sup> Schools are thus contested sites of influence and “disputes centre on which cultural values society should endorse as legitimate and truthful. Schools become crucibles of conflict, and censorship challenges arise from this conflict.”<sup>9</sup>

Censorship is a serious matter; censored material is made to appear worthless, inferior, or even dangerous. Censoring the LGBTQ+ community renders it invisible, and effectively brands its members this same way. The Catholic church, evangelical Christians, and other social and political conservatives have long opposed any dissemination of LGBTQ+ information in public and separate schools and have actively censored the LGBTQ+ community. The sexual orientation and way of life of this community runs counter to their beliefs, and they fear that the dissemination of such information in schools would legitimize it, making it appear both acceptable and normal. Conservative opposition has contributed to a culture of homophobia and silence. While this source of opposition and censorship has remained unabashedly steadfast in maintaining its prejudice, it has slowly been losing ground in Ontario since 1969.

This paper examines the struggle to include the LGBTQ+ community in the Ontario Health and Physical Education curriculum and the arguments that have been used to censor the LGBTQ+ community. Combating censorship has been a complicated process because each political party since 1969 has promoted its own agenda and the interests of its own constituents. Some parties have been more willing to work towards curricular inclusiveness with LGBTQ+ activists, whereas other parties (and interest groups) have resisted inclusivity in education. The struggle for curricular inclusiveness has not merely been a political battle fought through the Ministry of Education, however; since there is a constitutionally-protected, publicly-funded Catholic separate school system,<sup>10</sup> religious ideology concerning morality and values and the right to practice have come into conflict with the safeguards of civil rights, making inclusiveness a constitutional battle. However, a country like Canada, which is officially committed to rights-based liberalism, must ensure that these rights are maintained in all facets of public life, including education. Even though the Catholic separate school system is protected constitutionally, it is still legally required to respect civil rights. Ultimately, it was the Charter of Rights and Freedoms and the Ontario Human Rights Code that helped prevent censorship in education. Human rights legislation played an educational role by defining and legitimizing new social norms, thereby making them acceptable and conferring on them the force of law. Furthermore, these pieces of legislation and the body of educational law they have generated have provided a framework for creating educational policy, acting as a guiding force that allows for accommodation and inclusion in public education. The Charter of Rights and Freedoms and the Ontario Human Rights Code were used to

uphold civil rights in both school systems and circumvented the political decision-making that for so long resulted in censorship of the LGBTQ+ community.

### **Equality-seeking Activism: The Struggle for Human Rights**

The censorship controversies that arose over the inclusion of queer-positive material in sexual education took place in the context of the differentiation between two ideologies present in the LGBTQ+ community during the 1970s and 1980s, and the struggle to secure human rights protection. This struggle was interwoven with the fight for curricular inclusiveness. The LGBTQ+ community was not a monolithic entity and did not possess a single agenda, and early radical gay and lesbian liberationist activism would be supplanted by a more assimilationist advocacy in the 1980s. Historian Tom Warner writes that gay and lesbian liberationists rejected the notion that gays and lesbians were sick, immoral, or criminal and fought against cultural conventions that reinforced and perpetuated inequities of power. For liberationists, “[a]n important element of this analysis is a realization that sexism and rigid gender role socialization contribute significantly to that oppression. It further sees the traditional or nuclear family as a key agent of social control, embodying sexism that oppresses women and gays... Lesbian and gay liberation also [meant] that sex does not have to await a monogamous relationship, that it can be engaged in without guilt or shame, solely as a form of recreation.”<sup>11</sup> However, as Miriam Smith highlights, assimilationist groups like Equality for Gays and Lesbians Everywhere (EGALE) shunned the more radical aspects of liberationist ideology and strove towards achieving equality rights and the recognition of same-sex relationships. The middle-class activism and strategies of EGALE “reflected the rise of rights talk... and focused on the law as a mechanism for the achievement of social change and focuses activism on the courts, with lawyers as the agents of the movements.”<sup>12</sup> While the early gay and lesbian liberationist emphasis on social transformation and sexual liberation would not completely disappear, and while there was overlap between the two perspectives, seeking equality and bringing in anti-discrimination measures came to dominate the character of the movement.

However, even with the shift to an assimilationist equality rights agenda, legal victories the LGBTQ+ community achieved were hard won and always contested. In 1975, when the Ontario Human Rights Commission reviewed the province’s human rights legislation, substantial pressure on the Progressive Conservative government of Bill Davis led to the decision to not include sexual orientation as one of the grounds on which discrimination was prohibited. Even though the Coalition for Gay Rights in Ontario, founded in 1975, worked to educate the public on issues of gay liberation, “opponents to the inclusion of sexual orientation argued it was a moral issue and a matter of choice, not a rights issue, and so should not be included in human rights legislation.”<sup>13</sup> Sexual orientation was always the most contentious human rights issue throughout the commission’s review. The reception of its 1977 report, *Life Together*, which recommended that discrimination based on sexual orientation be prohibited, proved this to be true. As Jennifer Tunnicliffe notes, “The opposition was intense and

arguments against inclusion were often moral or religious and based upon the premise that sexual orientation was a choice and so not comparable to such characteristics as gender, race or disability... Even many individuals who largely supported *Life Together* could not accept the inclusion of sexual orientation.”<sup>14</sup> Ultimately, content that was too controversial was deleted—including the prohibition against discrimination on the basis of sexual orientation. While the Ontario Human Rights Code of 1981 was a step forward and challenged accepted norms, the government allowed the beliefs of a vocal minority and negative media response to triumph. It was not until 1986 that sexual orientation was finally added to the rights code.

Even when Section 15 of the Charter of Rights and Freedoms came into effect in 1985, ‘sexual orientation’ as a prohibited ground of discrimination was not included. While the charter was entrenched in 1982, equality provisions were absent. Section 15 of the charter, the section that dealt with protection from discrimination, came into effect three years later. This delay had been provided to give the federal and provincial government’s time to bring their legislation into line with the new provisions.<sup>15</sup> However, when the charter was formulated, there was no national LGBTQ+ organization to lobby at the federal level. It was no surprise, then, that in 1985 when the charter committee was crafting equality provisions they voted twenty-three to two against including sexual orientation in Section 15. However, then-Justice Minister Jean Chrétien acknowledged that the government would write section 15 in an open-ended manner, “which would permit the courts to add other grounds at a later date.”<sup>16</sup> The “in particular” phrase would allow for sexual orientation to be “read into” section 15. As Miriam Smith highlights in her historical analysis of gay and lesbian rights at the institutional level in the US and Canada, the Charter of Rights and Freedoms would ultimately become an overarching and centralizing document that made litigation easier for LGBTQ+ plaintiffs.<sup>17</sup>

Clearly, the search for rights-based equality was a contentious process, with some established conservative interest groups ready to fight against any recognition of sexual orientation and, later, gender identity. The same would prove to be true of curricular inclusiveness. Even with the most radical aspects of gay and lesbian liberation tempered, and assimilationist rights-based advocates stressing monogamy and marriage, conservative forces would mobilize to prevent any inclusion of references to the LGBTQ+ community in sexual education. As will be shown, discussion of same-sex marriage, safety strategies to stop harassment due to sexual orientation or gender identity, and how gender identity and sexual orientation were factors that help individuals develop a positive self-concept, were vigorously contested. These conservatives used fear-mongering tactics and expressed their opposition through religious and moral arguments.

### **Sex Education and Censorship of the LGBTQ+ Community, 1969–1980**

In 1969, the passage of Bill C-150, which was created by former Justice Minister Pierre Trudeau, signalled a breakthrough for the sexual revolution because it decriminalized homosexuality and abortion. That same year, birth control was finally

legalized as well. New legislation and attitudes inspired by the sexual revolution of the 1960s left educators in Canada trying to determine what role they would play in sexual health education. Unlike the reception of sex education in the 1950s, which historian Christabelle Sethna has shown to be characterized by caution and resistance,<sup>18</sup> progressive teachers and educators tried to remain informed in order to best approach and teach these sensitive topics. Ultimately, what had previously been taught by parents would slowly be assumed by teachers and other school staff. However, the Ministry of Education did not immediately develop a curriculum for sexual education; this was left mostly to school boards in the early 1970s and they did so in an eclectic fashion. The most pressing problem was that local initiatives were met with local resistance, and this was most true of LGBTQ+ initiatives. In 1973, Waterloo's Gay Liberation Movement received federal funding through an Opportunities for Youth grant for its *Operation Socrates Handbook*. The handbook addressed common questions about homosexuality. It included articles on how the subject was regarded by the law and the church, and it listed the addresses of all gay liberation offices.<sup>19</sup> Four thousand copies were sent to high school guidance departments, but local boards of education were not consulted before the booklet was distributed. Aware of the backlash this material could receive, one of the authors reasoned that if the boards were aware that the handbook was coming, "they would have been forced to take a stand on the matter, and it would probably have been a negative stand."<sup>20</sup> It was better not to publicize the material, but to have it available as a resource for students and educators. Nevertheless, articles and letters later appeared in the *Kitchener-Waterloo Record* in protest that disputed the use of government funds to support such projects.<sup>21</sup>

During the 1970s, activists visited schools to discuss homosexuality. Gay and lesbian liberation groups sought to build a bridge between the LGBTQ+ community and the schools. One of the goals of gay and lesbian liberation was to teach about the gay and lesbian community in an effort to combat homophobia; one of the best ways to do this was through public schools. Education was a crucial matter, as the Coalition for Gay Rights in Ontario made clear in 1976 at its second annual conference. The fifty delegates from fifteen organizations appointed an education committee "to develop a program on homosexuality for inclusion in sex education courses from Grades 7–13."<sup>22</sup> Education was a goal to be pursued in tandem with the aim of including sexual orientation in the Human Rights Code. Gay activists visited schools to speak on homosexuality as part of sex education classes, and these presentations were intended to reveal "the sheer ordinariness of gay people."<sup>23</sup> The visits from activists could provide information and help dispel the many myths surrounding homosexuality. Teaching children and adolescents about sexual orientation in schools could legitimize this information.

However, since the information being taught in sex education concerned morals and values, conservative forces saw school visits as a threat to their way of life. This concern over values in education was reflected in a 1973 report by the Department of National Health and Welfare on the development of sex education policies. The authors stated that "[t]he use of terms such as sex, responsible, normal, and moral

seem to be very threatening to people's values. All too often, progress in the sex education area is stopped by the semantic debates over what these terms mean to different people. We must... start dealing with topics such as sex education in an objective way."<sup>24</sup> The authors realized that all information had to be included, and nothing omitted. However, conservative groups were unable to compromise, and sex education was effectively halted and/or censored because of debates over these terms. The following two case studies reveal the conservative dislike of an "objective" approach to sex education, as well as their ability to prevent the inclusion of queer-positive content at the local level.

In 1974, the Halton Board of Education gained national attention after a visit by four gay liberation group members who attended a grade 12 health education class at M. M. Robinson High School in Burlington was subsequently condemned by evangelical minister Ken Campbell. Campbell, whose two daughters attended the school, condemned the presentation as "moral pollution" and withheld part of his property taxes in protest.<sup>25</sup> The two "homosexuals" and the two "lesbians" (as the journalist referred to them) who gave the presentation were substitutes for McMaster University psychiatrist Dr. Joel Walker. When Walker could not make it, the school was referred to "the McMaster Sexual Education Centre, who in turn agreed to arrange for a speaker or speakers to come and discuss interpersonal relations, including the interpersonal relations of homosexuals and lesbians," according to Keith Craig, principal of M. M. Robinson.<sup>26</sup> Craig stated that he was glad he did not interfere with the presentation, and that while the decision to allow it may have been questioned by Mr. Campbell, it was quite wrong to attribute it to "moral corruption."<sup>27</sup> The Halton Director of Education also took offense at Campbell's attempts to censor education. The director attacked conservative clerics and "spoke of the difficulties of meeting the demands of fundamentalist denominations who want material deleted from health textbooks and all references to evolution dropped. 'You can go down the list of these right wing groups who say that all references to sex are absolutely out and no one can have it.'"<sup>28</sup> Ultimately, Campbell's claims of "moral pollution" were rejected by the Halton board and the principal's position endorsed. Campbell, however, continued to protest against what he deemed "dogmatic secularism" and "literary sewage" in public education.<sup>29</sup> The battle between Campbell and his Renaissance group and the school board lasted about a decade, and the threat of censorship was always a tangible one. Furthermore, it is possible that this publicity made many teachers and school boards nervous and hesitant to teach or speak openly about homosexuality.

The Toronto Board of Education (TBE) was unable to achieve curricular inclusiveness due to conservative backlash. The TBE was well-positioned to become a focal point in the struggle for positive curricular inclusiveness due to the history of queer organizing and the large LGBTQ+ community in the city, but extenuating circumstances would allow conservative backlash to prevent inclusiveness. The secondary literature concerning the struggles of progressive educators and LGBTQ+ groups to achieve curricular inclusiveness and the opposition they faced is well-documented. The struggles and failures during the 1970s is explored by Michael Graydon, who

illustrates that the context of the times was not conducive to curricular inclusiveness. The murder of 12-year-old Emanuel Jacques by alleged homosexuals in Toronto, the publication of "Men Loving Boys, Loving Men" in the *Body Politic*, and the impact of the zeal expressed in Anita Bryant's "save the children" campaign on Canadian evangelicals and conservatives re-energized fears of homosexuals in the schools and temporarily halted the process of gaining gay rights.<sup>30</sup> While the Ontario Human Rights Commission recommended prohibiting discrimination based on sexual orientation, these events would both undermine the protection of gay and lesbian employees working in schools, and prevent discussion of homosexuality in them. Graydon highlights the fear that some parents harboured of homosexuals preying on children within the school system, as well as fears that their children would be exposed to proselytization. Extenuating circumstances allowed right-wing forces to reinvigorate their old arguments and make controversial issues such as discussion of homosexuality in schools a politically unpopular topic. Christabelle Sethna also notes the fear of a partnership developing between progressive educators and gay rights activists in the mid-1970s. For many Ontario parents, fears about homosexuality in the school system overshadowed most, if not all, aspects of sex education.<sup>31</sup> These fears eroded support for a ministry-approved curriculum that would include queer-positive content. The proposed ministry revisions arrived at a time not conducive to curricular inclusiveness and proved too much for many parents.

As the censorship struggles in the Waterloo, Halton, and Toronto boards demonstrate, local school boards had to fight against censorship of queer-positive content. While some progressive boards and/or schools taught about homosexuality, the implementation of sexual education was an ad hoc process. At times schools did not even have the support of their school board, let alone the support of the Ministry of Education, whose backing would have been extremely beneficial in combating censorship. A two-volume report released in 1974 and 1975 sponsored by the Department of National Health and Welfare and titled *Sex Education in Ontario Schools* revealed the opposition schools faced, as well as the attitudes towards incorporating discussion of homosexuality in schools.<sup>32</sup> The objective of the survey was to report on the contemporary status of sex education in the schools of Ontario and a major topic studied was community support of or opposition to sex education.

In the first part of the report, 750 elementary public school principals and 275 separate school principals were surveyed. The data revealed that:

slightly more of the separate school respondents (34%) than of the public school respondents (27%) reported that there had been opposition to sex education. The leading source of opposition was reported to be parents, with one-fourth of the respondents indicating this. Among separate school respondents the second most frequent source of opposition was reported to be the school board.<sup>33</sup>

The respondents in the second part of the report were secondary school teachers who taught sexual education. The survey included 548 physical education teachers, 204



home economics teachers, and 297 guidance teachers, since each of these teachers usually taught at least one aspect of sex education. However, the author noted that “[t]eachers from Catholic Secondary Schools were not included because according to officials of the Ontario English Catholic Teachers Federation, the teaching of sex education in Catholic schools is not concentrated in specific disciplines as in public schools.”<sup>34</sup> Sex education/family living was most likely taught (or at least said to be taught) in religious education or science courses. The author of the survey also noted that representatives from homosexual organizations spoke at some classes.<sup>35</sup>

When it came to opposition, teachers identified parents and religious groups, but there was also opposition from the school hierarchy—including administrators and school boards. Respondents reported opposition from parents (18 per cent), administrators (15 per cent), school boards (13 per cent) and religious groups (2 per cent).<sup>36</sup> The lack of support from administrators was particularly frustrating for teachers and “[s]everal teachers felt that administrators were often more concerned about potential opposition to programs than with the needs of the students.”<sup>37</sup> Secondary school teachers tended to express more liberal views than the elementary school principals as revealed in the first part of the survey, and this is reflected in their frustration with administrators. Secondary school teachers were upset at administration and school boards for hampering student education and for imposing censorship on them. A possible reason why administrators and school boards were sources of opposition is probably attributable to the fact that it would be administrators and the boards that would have to deal with community backlash. Therefore, they tried to prevent it before it happened.

Some respondents were also fearful of backlash from the community. There was a pervasive fear on the part of some teachers that parental opposition might occur and result in controversy. What was particularly disturbing to these teachers was not knowing which topics were acceptable to the community.<sup>38</sup> Teachers “strongly suggested that there was a need for a sex education curriculum which had school board approval and support, as it would provide teachers with at least some feeling of security in dealing with controversial topics in sex education.”<sup>39</sup> Teachers argued that the importance of school board-approved and/or ministry-mandated curricula could not be understated, since it would sanction the information taught. It would have allowed schools and/or school boards to overcome local politics and controversy and would help implement a uniform standard for sex education. While teachers and administrators both feared backlash, administrators seemed unwilling even to try to implement any sex education program.

Due to increasing pressure from teachers and school boards, as well as public debate about the role(s) schools should take in addressing topics related to sexuality, the Ontario Ministry of Education released a Physical and Health Education curriculum under the Conservative government of Bill Davis in 1975.<sup>40</sup> However, the guidelines presented did not address any of the controversial issues facing schools and school boards at the time—it contained no discussion of homosexuality at all. The introduction stated that the curriculum document was:

intended to assist individual teachers and local curriculum committees in developing courses of study, and it describes the options and variations that may supplement the required components of these courses. It is hoped that this guideline will encourage individual boards and schools to design programs in physical and health education that are vital, fulfilling, and relevant to the needs of the students in their specific locale.<sup>41</sup>

However, the curriculum document did not touch on the issues of sexual orientation and gender identity (or abortion, birth control, and casual sex).<sup>42</sup> If anything, it assisted in establishing sexual education by removing the most contentious issues—the very issues which were preventing its implementation in the first place. The concern over values and morality that had been debated in the media resulted in a watered-down sex education curriculum. While the guidelines were not meant to be complete or all-inclusive, it was assumed that teachers and schools would fill in the gaps and add pertinent information when assembling health courses.

If the information was not explicitly conveyed in the guidelines, many teachers and schools proved unwilling to fill in the gaps due to fear of opposition. This led to variations in the teaching of sex education. This is evident since just one year later the Department of National Health and Welfare released a six-pack teacher's guide to sex education. Substantial effort went into both the design and the information. All six booklets bore reproductions of art works from the National Gallery of Canada, but they were functional as well as beautiful, covering topics such as birth control and abortion, misuses of contraceptives, venereal disease, and homosexuality.<sup>43</sup> In the introduction, there is a note for teachers that acknowledged that “the present flux of standards, morals, and attitudes makes the teacher's job even more difficult for in addition to factual information, the teacher must communicate the need for some structure, some sense of values.”<sup>44</sup> However, even though values are stressed, the booklets presented multi-faceted views on all the issues in an impartial and objective way. On the subject of homosexuality, the booklet effectively distinguished fact from fiction. It stated that “male and female homosexuals are no different physically than others in our society. They are not necessarily emotionally unstable, mentally ill, neurotic, seriously maladjusted, sexually immature, more dependent, or less well rounded personalities than heterosexuals... [H]omosexuals do not necessarily fall into stereotyped sexual roles i.e. male homosexuals are not necessarily hairdressers or interior decorators, and female homosexuals are not necessarily truck drivers.”<sup>45</sup> These booklets on sexual education provided the information that was lacking in the Physical and Health Education curriculum.

However, since these booklets were designed only as resources, and many of the topics they addressed were not adequately presented in the curriculum guidelines, they did not have the same authority when it came to course planning. A *Globe and Mail* article in 1978 addressed the fact that the Ministry of Education did not truly teach sex education, and that it “has washed its hands of sex education.”<sup>46</sup> The variation in sex education among schools and lack of real sex education guidelines was problematic, evidenced by the fact that these resource booklets were prohibited by

North York for being too liberal, at the same time that teachers at other Metropolitan Toronto school boards were able to use them.<sup>47</sup> Education Minister Thomas Wells felt that “sex education is so delicate an area that he would rather have each community develop its own program.”<sup>48</sup> However, not all schools had the resources or staff to adequately develop a program and the threat of opposition from the local community was real. This resulted in many interpretations of what information constituted sex education.

This censorship of education was reflected in a Canadian Education Association survey report published in 1977. The purpose of the survey was to find out the extent to which Family Life Education had been introduced into schools in Canada and the difficulties encountered in establishing Family Life Education programs. Questionnaires were sent out to teachers throughout the country. Because over 77 per cent of teacher replies came from Ontario, the survey provides a good indication of the struggle over sex education in Ontario. The survey identified factors that hindered the spread of sex education, such as lack of apparent demand from the community, a lack of suitably qualified teachers, a scarcity of resources for the required curriculum development, or anticipated local opposition. It is clear from the survey that anticipated local resistance prevented the implementation of sex education. The author of the report wrote that even though resistance was “undoubtedly a real factor in the board’s decision to hold off introduction of a program... [a]nticipated opposition did not always materialize in cases where the board took pains to keep the parents informed at all stages of program implementation.”<sup>49</sup> Schools would rather self-censor than run the risk of community backlash. Censorship would prevail without a struggle.

In order to combat this censorship, the report’s author explained that even if parents were not consulted in the creation of sex education programs, simply informing them about the material being taught could help in implementing it. He wrote that “pressure groups are a feature of our pluralistic society, and they have their role to play in a democracy, they thrive in an informational environment where uncertainty and rumor abound. The fact that groups opposing sex education in certain parts of the country can win so much support is indicative of dubiety about the purposes and methods of sex education.”<sup>50</sup> A vocal minority, like Ken Campbell’s Renaissance Committee, could stir up a storm of protest by playing on the public’s insecurities and confusion. If school boards and the education ministry could have disseminated information about what was being taught and educated the public at large, these pressure groups would have lost support as facts win over fear. However, these groups will always, then as now, be adamantly opposed to sex education and curricular inclusiveness of the LGBTQ+ community. As a *Toronto Star* news piece revealed, Campbell and the Halton Renaissance Committee were against education that presented “the gay lifestyle as normal for many people in our society—a socially acceptable lifestyle” as well as “the present educational system with its basic commitment to secular humanism.”<sup>51</sup> Right-wing pressure groups, especially those with a religious bent, could not be placated with anything less than their ideological beliefs being upheld. This is problematic, since the concern over values inevitably leads to censorship.

While the 1960s saw the Ontario Ministry of Education remain neutral in matters relating to sex education, the first attempt in 1975 was thus marred by caution; the Physical and Health Education curriculum was sanitized in matters relating to sexuality. Nevertheless, some teachers and school boards continued to pressure the government for more explicit guidelines and better direction for sex education. Throughout the 1970s, acknowledgement of the LGBTQ+ community in curriculum was sporadic and largely depended on whether individual school boards would allow the community to be a vocal and active participant in the schooling process. Even with the creation of the Charter of Rights and Freedoms and the revisions to the Ontario Human Rights Code in the 1980s, the Ontario Ministry of Education remained neutral when it came to inclusion of the LGBTQ+ community.

### **A Small Breakthrough: AIDS Education in the 1980s**

Surprisingly, it was a ministry-led initiative of the Liberal government that opened up a small avenue for discussion of sexual orientation in 1987. The Ministry of Education was averse to establishing clear guidelines on sex education, but the AIDS crisis in the 1980s necessitated a response. Since public education was mandatory, schools were in a position to reach youths and help prevent the spread of the disease. In order to promote student health and provide students with the information they needed to protect themselves and make informed decisions, the ministry had to take an active role in establishing guidelines for educating adolescents. The ministry published a five-part resource document in 1987 entitled *Education About AIDS*. In the preface, it stated that “[o]n January 27, 1987, Sean Conway, Minister of Education, announced that education about AIDS would be compulsory in Ontario schools, beginning in the school year 1987–88.”<sup>52</sup> This mandate that AIDS had to be taught could not be ignored, and a unit of study on AIDS was required in the health education program in grade 7 or 8, and a second mandatory unit on AIDS was required in the secondary health education program, one of the credit(s) needed to satisfy the compulsory credit requirements for obtaining a diploma.

These resource documents allowed for all sorts of misinformation to be corrected. While a discussion of homosexuality and AIDS was probably not the ideal way to achieve curricular inclusiveness, it did work towards dispelling the idea that AIDS was strictly a homosexual disease. A teaching strategy included was a true or false questionnaire to distribute (“AIDS Facts or Fallacies”) in which students were to reflect on their beliefs about each statement given. One of the statements was “only homosexual or bisexual men get AIDS.”<sup>53</sup> A teacher could provide correct information and dispel myths, which could help alleviate discrimination. In addition, in a general discussion on values awareness, teachers were encouraged to review information about AIDS and list key issues associated with it, including the stigmatization of homosexuals. Students were to “examine the stereotypes and influences they have been exposed to, and to assess their values and beliefs... Students must sort out their feelings and beliefs about the disease in order to behave responsibly towards themselves and others.”<sup>54</sup> AIDS education became a part of an ongoing struggle to combat homophobia.

However, this mandatory information about AIDS did not sit well with the separate schools in Ontario. Whereas earlier the curriculum outline was vague enough so that sex education could be approached in numerous possible ways, this policy was forthright about what had to be taught. Where some separate schools taught sex education under the auspices of religion or family living, discussion of AIDS in such contexts seemed somewhat out of place, since Catholic teaching stresses abstinence and monogamy and promotes the belief that homosexuality is immoral. As a trustee for the Toronto separate school board said, “Why should we give instruction about the use of condoms when the Church teaches that premarital sex, masturbation, homosexuality, and sex outside of marriage are sinful?”<sup>55</sup> Discussion centred on preserving faith and Catholic values versus individual norms, AIDS as a moral or medical problem, and the disadvantages of withholding AIDS information from students. The clash between religious values and mandated educational subject matter would become an ongoing conflict.

This conflict was reflected in a 1988 study on sex education in Canada—the first since the 1977 Canadian Education Association survey—which illustrated the chaos that discussion of homosexuality caused in the separate school boards in Ontario. The authors noted that “most public boards present homosexuality as a variant of normal human sexuality, while Catholic boards continue to regard it as an aberration to be discouraged.”<sup>56</sup> The authors then gave examples of progressive public boards, like the Central Algoma Board, which described homosexuality and heterosexuality as “variations of sexual behavior,” and the Lennox and Addington school boards taught that homosexual families are as normal as heterosexual ones. The North Shore Board (Elliot Lake) recommended that students in grade 9 discuss the pros and cons of gay rights and understand the reasons for homosexuality. Frontenac County Board in Kingston expected grade 9 students to “discuss intelligently the concept of homosexuality,”<sup>57</sup> and the Halton Board in Burlington recommended that students discuss homosexual marriages.<sup>58</sup> The authors concluded that there was a fundamental difference between public and separate school systems in their approach to sex education, because “the guidelines of public boards, show the influence of the ‘values clarification’ philosophy of education. Students are encouraged to develop personal views on moral issues in subjective fashion. The separate schools, in contrast, stress objective moral standards against which individual views can be measured.”<sup>59</sup> This of course reflects the faith-based teaching of the Catholic church and school system, the hierarchical nature of the church, and a collective standard of morality which is transgressed at the peril of the individual. It appeared that separate schools would have to be compelled to include the LGBTQ+ community in separate schools, and acknowledge and accept discussion of sexual orientation and gender identity.

### **The Charter and the Code: Curricular Inclusiveness at the Local Level, 1985–2010**

The next decade did not see much change in approach to sex education. Ontario elected a New Democratic Party government that was in power from 1990 to 1995,

and in 1993 a new curriculum document was released by this government, *The Common Curriculum: Grades 1–9*. No explicit mention was made of the LGBTQ+ community.<sup>60</sup> However, gains were being made at the local level. The Ontario Human Rights Code was an effective tool to promote curricular inclusiveness, and this is demonstrated in the curricular debates concerning homophobia and sexual education that occurred in the Toronto Board of Education (TBE), especially in comparison to earlier attempts during the 1960s and 1970s.

The struggle to achieve curricular inclusiveness within the Toronto Board of Education before sexual orientation was added to the Human Rights Code is also documented by John Campey, Tim McCaskell, John Miller, and Vanessa Russell. They highlight that before 1986 any attempts to include it were met by failure. When the TBE was crafting an anti-discrimination policy in 1980, sexual orientation was removed from the policy statement as a result of a fourteen-to-twelve vote. The board's solicitor reported that the policy against discrimination exceeded the requirements of the Ontario Human Rights Code. In addition, a policy was passed that prohibited proselytizing for homosexuality, ensuring that a discussion of it could only take place "when conducted by teachers and appropriate Board staff."<sup>61</sup> However, the tragic 1985 murder of school librarian Kenneth Zeller by Toronto secondary school students acted as a catalyst for policy and curricular debate regarding homophobia in education. TBE administrators proposed two initiatives: first was a program in human sexuality that involved social workers who could address student concerns; second was the development of teaching materials for a unit on sexual orientation. The fight to combat homophobia in the school system was led by Trustee Olivia Chow, and Campey and co-authors highlight that "Chow's efforts were boosted by the passage of amendments to the Ontario Human Rights Code to include sexual orientation in 1986."<sup>62</sup> The rights code provided an effective platform from which to protect human rights and offered a framework within which to create educational policy. Coupled with a provincial NDP government committed to gay rights between 1990 and 1995, the board was able to make impressive gains and combat homophobia after the code was amended. In 1987, the ban on gay speakers was lifted; in 1988, the Human Sexuality Programme was approved; in 1990, sexual orientation was added to the board's anti-discrimination policy; and in 1992, the clause prohibiting proselytization was repealed. In 1992, the resource guide, *Sexual Orientation: A Focus on Homosexuality, Lesbianism and Homophobia*, was also released. While Campey and co-authors also note continued opposition, it was ultimately not able to prevent these achievements.

The rights code was extremely effective in allowing for curricular inclusiveness to be achieved by the progressive educators within the TBE. Much like the Charter of Rights and Freedoms, it provides a framework within which educational policy can be crafted and allows for it to be defended on human rights grounds. Sociologist Michael Graydon, who examined the turmoil during the 1970s preventing the implementation of sex education in the TBE, concludes that "the [Ontario Human Rights Commission's] recommendation testified to the growing social recognition of the lesbian and gay community" and that "for all the ink spilled by those opposed to homosexuality and gay rights, one could argue their impact on the pace and nature

of sex education was limited.”<sup>63</sup> While the code was important in achieving curricular inclusiveness, it is also important to note that the TBE was large and well-funded and could gain the vocal support of Toronto’s LGBTQ+ community. Other boards of education across the province may not have been as well positioned to develop their own resources or fight community opposition. This is the impression given by Dr. Helen Jefferson Lenskyj, who worked on the resource guide. She notes that this ground-breaking initiative represented a more progressive stance than any other Canadian board of education had and was likely to serve as a model for other boards, since requests for copies had been received from health educators in both Canada and the United States.<sup>64</sup> A ministry-created curriculum would help overcome the problems faced by local boards. An inclusive provincial curriculum would have the authority of the ministry behind it and would reflect the province’s commitment to human rights. While the gains made by the TBE were extraordinary, the 1995 election of a Conservative government unsympathetic to the LGBTQ+ community would forestall the creation of an inclusive provincial curriculum for the time being.

The second half of the 1990s saw the Progressive Conservatives return to power under the leadership of Mike Harris. From 1995 to 2003, the Harris government stressed a return to the basics of education and severely curtailed spending on it. The government did not commit itself to combatting homophobia and heterosexism in education because it had satisfied the demands of its constituents in the update made to the Physical and Health Education curriculum in 1998.<sup>65</sup> It stressed sexual abstinence as a form of birth control and made no provisions for discussion of other methods of birth control. When the curriculum was unveiled, Education Minister Dave Johnson said that “what pupils learn about condoms, other forms of birth control and homosexuality will be left up to local school boards and parents.”<sup>66</sup> By its unwillingness to publicly commit to including queer-positive content in the curriculum, the Harris government allowed conservative groups to continue to ignore and marginalize the LGBTQ+ community. An atmosphere of silence prevailed in classrooms. It is no wonder that the new curriculum and the Harris government drew praise from some parents and the Institute for Catholic Education, an arm of the Ontario Conference of Catholic Bishops.<sup>67</sup> Even though the will to placate conservative groups was never acknowledged, this goal was clearly evident in the material both included and omitted from the guidelines. Defending the absence of homosexuality in the curriculum document, Johnson said “the teachers who developed it felt that the material before us today was relevant and doable [and that] students do not have an endless amount of time.”<sup>68</sup> From his response, it can be inferred that homophobia was not relevant or that discussing it was not worth the time, or possibly that Johnson was simply sidestepping controversy.

### **The 2010 and 2015 Health and Physical Education Curriculum**

The new millennium brought about the most profound change in education. In 2010, a sympathetic Liberal provincial government led by Dalton McGuinty updated the curriculum, acknowledging LGBTQ+ students and the LGBTQ+ community in

the process. In essence, it wanted to develop a 21st-century curriculum. The focus was on equity and inclusive education.<sup>69</sup> The information included in the curriculum concerning sexual orientation and gender identity would have contributed to a more inclusive education, and would have helped dispel homophobia in schools. One of the groups that participated in the consultation process on developing the new curriculum was the Coalition for Lesbian and Gay Rights in Ontario. Nick Mule, founder of Queer Ontario said, “the coalition put forth the importance of creating a curriculum that recognized the existence of lesbian, gay, bisexual and transgendered people... [I]f all students are getting is this kind of normative approach of a heterosexual form of sex, it is very limiting and not very supportive to those youth and children that identify differently.”<sup>70</sup> The new curriculum addressed LGBTQ+ students and provided them with support at a very important time in their lives when it comes to identity formation. In grade 3, students were to describe how “‘invisible differences’ ex. Learning abilities, skills and talents, personal or cultural values and beliefs, gender identity, sexual orientation, family background, personal preferences, allergies and sensitivities make each person unique, and identify ways of showing respect for differences in others.”<sup>71</sup> Since the last time the curriculum had been updated, gay marriage had been legalized, so same-sex marriage was acknowledged in this section. In grade 5, students were taught to demonstrate the ability to deal with threatening situations by applying appropriate living skills and safety strategies, such as the case where one was harassed due to their sexual orientation.<sup>72</sup> In grade 6, students were taught to identify factors that affect the development of a person’s self-concept, such as gender identity.<sup>73</sup> In grade 8, sexual orientation, gender identity, and self-concept were explicitly mentioned in specific expectations for the topic of Human Development and Sexual Health within the Understanding Health Concepts strand. Students were to “demonstrate an understanding of gender identity (e.g., male, female, two-spirited, transgendered, transsexual, intersex) and sexual orientation (e.g., heterosexual, gay, lesbian, bisexual), and identify factors that can help individuals of all identities and orientations develop a positive self-concept.”<sup>74</sup> It is evident that the curriculum was about acceptance and understanding, and included queer-positive content. LGBTQ+ children gained visibility and could identify themselves in the curriculum.

However, religious groups mobilized quickly and joined with other conservative political forces to prevent the new curriculum from being implemented, fearing that the inclusion of these terms legitimized them and promoted them as acceptable. One of the most outspoken opponents was Charles McVety, an evangelical Christian leader and president of Canada Christian College in Toronto. McVety lambasted the curriculum and said it was unconscionable to teach 8-year-olds about same-sex marriage, gender identity, and sexual orientation, accusing the curriculum of having a corrupting influence.<sup>75</sup> This argument was also used by the director of the Institute for Canadian Values, Reverend Ekron Malcolm, who stated that he believed teaching about gender identity and sexual orientation would “end up infringing on their thought processes and their desires and ability to make correct choices.”<sup>76</sup> The argument Malcolm used, that teaching children about gender



identity and sexual orientation would persuade them to become queer, had been used since the 1970s. However, as uninformed and tired as their message was, it was able to whip up frenzy among the public. Part of the reason that their message resonated with the public was because the ministry posted the curriculum on its website without much promotion, even though it had taken two years to develop and incorporated input from principals and teachers in school systems as well as from parent groups. The public at large was not informed, so misinformation and confusion abounded and the ministry did little to educate the public about what exactly would be taught.

Perhaps fearful of the response it could receive, the Liberal government did not promote its new curriculum to the public. Indeed, it drew the wrath of conservative pressure groups who united to protest it. Some Christians and Muslims joined together to boycott the curriculum in Toronto in the hopes of making McGuinty abandon the new curriculum.<sup>77</sup> While many Liberals defended it, the curriculum was ultimately shelved by McGuinty on April 22, 2010. McGuinty claimed that he had been unaware of the content of the curriculum document until a backlash and protests surfaced. In his decision, he remarked that “the new *Curriculum* needs a ‘serious rethink’ ” and that, for “most parents, it came out of nowhere, they are obviously not comfortable with the proposal we put forward.”<sup>78</sup> Fearful of potential political repercussions in the wake of intense lobbying, shelving the document was a strategic political move in the face of overwhelming negative publicity. The Liberal government had not done what so many surveys on sex education had advocated—keep parents and the general public informed. By informing the public and giving them facts and explanations, it might have prevented conservative groups from spinning their fiction in such a way that the government had to halt the implementation of the new sex education curriculum. Consequently, censorship prevailed as the provincial government folded its hand. The LGBTQ+ community was once again successfully censored in public education.

While the proposed curriculum document was ultimately shelved, an interim version was released with the censored elements omitted. When the interim version was released, the Growth and Development Strand, which had contained the controversial information, still followed the 1998 guidelines. While the interim document still contained a commitment to inclusive education and mentioned sexual orientation and gender identity in the front matter of the document, they were removed from the overall and specific expectation guidelines. No mention was made of same-sex marriage, invisible differences, or preventing harassment based on sexual orientation or gender identity. The only information included about these topics appeared in brief definitions in the glossary. Once again, teachers and schools were left to decide whether they wanted to teach this information.

The situation changed in 2015, however, as the Liberal government, now led by Premier Kathleen Wynne—the first openly gay head of government in Canada as well as in the English-speaking world—released a curriculum very similar to the original 2010 curriculum.<sup>79</sup> The Wynne government kept the overall and specific expectations of the original 2010 curriculum document, and amended the front

matter. An important change was made to the front matter of the curriculum, which reflects updates to the Ontario Human Rights Code. In a discussion about co-educational and same sex classes, the curriculum advises teachers that, “[w]hen planning instruction and considering class groupings, teachers should be aware of and consider the needs of students who may not identify as ‘male’ or ‘female’, who are transgender, or who are gender-non-conforming. For more information about gender identity, gender expression, and human rights, see the website of the Ontario Human Rights Commission.”<sup>80</sup> In the original 2010 document, no mention was made of the Ontario Human Rights Commission or the rights code. In the interim version, this information was confined to the glossary for the teacher who was willing to address these subjects at their own peril. The prominent reference to the rights code in the Wynne government curriculum was most likely included to defend educational policy, and highlight the need to bring educational practice and policy in line with the law.

Education Minister Liz Sandals vowed not to cave in to pressure and claimed to have been disappointed when McGuinty pulled the curriculum.<sup>81</sup> Learning from the mistakes of the past, when reintroducing the curriculum in 2015, a *Globe and Mail* news article highlighted the government’s new approach to it, as the government made a “public-relations push to promote the merits of the sex-ed changes. Ms. Sandals let people know months ahead of time that the curriculum was being worked on, and she dropped the occasional hint on what it would contain. When it was released Monday, she called a press conference to explain its contents and the government’s rationale for the changes.”<sup>82</sup> The Canadian Education Association, the Department of National Health and Welfare, and various school boards had pointed out that parents need to be informed about what is to be taught if a sex education program is to be accepted.

Nevertheless, vocal opposition once again came from the more conservative elements in society. McVety and fundamentalist Christians condemned the document, labelling it an indoctrination vehicle.<sup>83</sup> The Muslim community also opposed it, since that community tended to be more culturally conservative.<sup>84</sup> A new tactic was also used to pressure the government into censoring the offending information about gender identity and sexual orientation in the curriculum: parents used their children as pawns in their protest and prevented them from going to school. What started as an online campaign called “Parents & Students on strike: one week no school,” which called for people in Ontario to help stop implementation of the curriculum, involved removing their children in elementary and high school between May 4 and May 11.<sup>85</sup> One of the organizers of the strike, Omar Kasmieh, was interviewed by the *Globe and Mail*. He said that “There are a lot of parents coming from different backgrounds that do not feel this is consistent with their beliefs... There’s material that’s considered age inappropriate... Canada is a multicultural society and they need to honour that.”<sup>86</sup> His statement was riddled with contradictions. Rights-based liberalism has become a defining feature of Canada, and rights included in the Canadian Charter of Rights and Freedoms would need to be upheld by the new curriculum. In the context of judicial activism, the charter and the rights code

guarantee that discrimination based on religion or sexual orientation and gender identity is prohibited. Freedom of belief and expression is protected and censorship of the LGBTQ+ community as well as religious minorities is prohibited as a result. One does not trump the other. While the entire Muslim community cannot be branded as conservative or opposed to inclusiveness, the displeasure of many members of the organized Muslim community was apparent. In Thorncliffe Park Public School in midtown Toronto, which is widely recognized as having a large Muslim population, 1,220 of its 1,350 students missed class—an absentee rate of more than 90 per cent.<sup>87</sup> Opposition was widespread, with parents from thirty-two school boards from across the province vowing to withhold their children from classes for the week of May 4 to 11 in protest. The Toronto District School Board reported 35,000 absences on Monday, and 28,706 absences on Tuesday. In the Peel Region School Board, the board reported 28,527 absent on Monday and 19,278 on Tuesday.<sup>88</sup> In Hamilton, about 800 families pulled their children from school.<sup>89</sup> Despite the protest, the new Health and Physical Education curricula for grades 1–8 and 9–12 were still slated to be implemented in schools beginning in September 2015.

Current events appear to suggest that the curriculum will not be pulled again. The government is poised to make a breakthrough in inclusive education. Education Minister Liz Sandals stated that the curriculum teaches that “in Ontario we have tremendous diversity... [W]e have people of various sexual orientations. All of the things I just mentioned are protected under the Ontario Human Rights Code. Ontario curriculum teaches the Ontario Human Rights Code.”<sup>90</sup> A more sympathetic government updated the curriculum to reflect changes that occurred in 1982 and 1986, finally bringing education into line with the law. While parents have the right to remove their children from sex education classes (which could also have been done in 1975), this pertains to discussions of sex only. Discussions about sexual orientation and gender identity are an entirely different matter. The curriculum affirms human dignity, reflects legal changes, and seeks to allow for curricular inclusiveness that contributes to more successful educational outcomes for all students. This was reiterated by Jeff deFreitas, superintendent of curriculum and instruction support service for the Peel school board, who made it clear that if parents say ‘I don’t want my child being exposed to any conversations about homosexuality or sexuality or gender,’ “that would be something they could not opt out of because that’s an area protected by human rights.”<sup>91</sup> From this point of view, discussions of topics in the curriculum protected by Ontario’s Human Rights Code are not something that can be censored. A sympathetic government, a more resolute leader in Kathleen Wynne, and the ability to learn from the McGuinty government’s mistakes make it appear that this curriculum will remain in place. In addition, legal victories surrounding same-sex marriage for the LGBTQ+ community have resulted in more progressive public opinion since 2003. Protests that led to the curriculum being shelved in 2010 have not achieved the same result. The outspoken opposition this time, even the massive numbers of people protesting, are an indication of fear on their part that this curriculum will be taught.

### **Conclusion: Liberal Education**

From the earliest days of implementing sex education in Ontario, resistance has never been far behind. Local school boards grappled with acknowledging and including the LGBTQ+ community in education during the 1960s and 1970s. Resistance came from religious, social, and political conservatives who sought to censor information about the LGBTQ+ community because their inclusion in curriculum would legitimize sexual orientation and gender identity, making it acceptable and normal—a position that was at odds with their values. Conservative members of other religious groups have since joined Protestants and Catholics, and they all use the same arguments to censor the LGBTQ+ community that have been used since 1969. Local school boards looked to the Ministry of Education to provide guidelines in times of turmoil to sanction and authorize inclusive education. However, any progress made has depended on the provincial government, since education is mandated provincially. The government of the day determined educational policy and reflected its own interests and the interests of its constituents. While the ministry and successive governments have responded to the demand for improved sexual education in varying degrees, it is no coincidence that major advancements in sexual education have been made under a Liberal government.

If schools are used for social and cultural reproduction, they need to reflect the society they are situated in and obey the ideals of the law. In fact, resorting to charter and rights code protection for inclusivity leads to increased judicial intervention in schooling. Human rights legislation and judicial intervention has had a profound effect on the educational system, as courts have increasingly defined the role and function of schools. In 1986, Michael Manley-Casimir and Terri Sussel predicted that the Charter of Rights and Freedoms would strengthen the judiciary at the expense of legislative supremacy. They argued that judicial decisions would result in legislative revisions and compliance with the newly-enacted constitutional provisions. The application of the charter to educational policy would create the need for administrative compliance with an emerging body of judicial interpretation.<sup>92</sup> Furthermore, Manley-Casimir and Sussel argued that the charter, with its constitutional force, would be a nationalizing influence, as judicial decisions regarding education-related matters “will reach into every province and school district, and may well contribute to a greater trend toward the incremental centralization of educational governance.”<sup>93</sup> While the charter had not yet generated a body of educational law when their work was published, an essay by Cesare Oliverio and Michael Manley-Casimir published in 2009 examines a variety of post-charter cases to arrive at conclusions about the judicial conception of the school as a social institution in a democratic society, and the way that the courts have conceived of the school as a formative institution in Canadian society.

Three Supreme Court cases covered by Oliverio and Manley-Casimir best highlight the judicial conception of the school as a social and formative institution in Canadian society. In *Ross v. New Brunswick School District No. 15*, Mr. Ross, a teacher, made public statements discriminating against people of the Jewish faith. The school

board hesitated to discipline the teacher and was consequently held responsible for discriminating against Jewish people and other minorities within the educational system. In *Trinity Western University v. British Columbia College of Teachers*, the College of Teachers denied Trinity Western University (TWU) its application to establish its own College of Education, because staff and students at TWU were required to sign a document that discriminated against homosexuals. An important aspect of the litigation was the question whether graduates of TWU would be prepared to work in a public school environment that requires all its participants to be free of discriminatory views and practices. In *Chamberlain v. Surrey School District No. 36*, Mr. Chamberlain, a primary school teacher, had asked the Surrey School Board to approve three books depicting same-sex families to be used as resources for the kindergarten and grade 1 curriculum. The board refused to approve these books, and Chamberlain began court proceedings, arguing that the board's decision was influenced by religious-based beliefs against homosexuality. Oliverio and Manley-Casimir highlight a common thread that runs throughout each Supreme Court decision, and that is the importance of "establishing an educational environment that is welcoming to all members of the community and is free of negative attitudes towards any sector of society."<sup>94</sup> In these court cases, the rulings by the Supreme Court described the role of schools in Canada and applied to all jurisdictions.

Oliverio and Manley-Casimir argue that judicial activism has played an important part in defining the role and function of schooling. Canadian courts and their constitutionally-grounded decisions have affected many aspects of educational policy and practice. They acknowledge that the statutes governing education in Ontario do not directly address the role of the school as a social and formative institution.<sup>95</sup> Nevertheless, the Supreme Court of Canada has made it clear that "the school is concerned with the development of all pupils encompassing all aspects of life—physical, emotional, social, cultural, and intellectual. In order to establish the necessary positive environment that fosters such growth, the school must become a milieu free of actual or apprehended discrimination."<sup>96</sup> The role of the school is concerned with the transmission of social values and the exchange of ideas premised upon principles of tolerance and impartiality. The implications for what is taught is clear: "it is obvious that the school must adopt a curriculum respecting diversity and avoiding at all costs the creation of a 'poisoned atmosphere' where any segment of society is devalued. [School boards] have the responsibility to provide inclusive learning materials that acknowledge all the realities within society... Basically, the Boards must promote respect and tolerance for all the people in the community it serves."<sup>97</sup> Courts will ensure that schools reflect the diverse society in which they are situated and will have to comply with the law.

With the creation of human rights legislation such as the Charter of Rights and Freedoms and the Ontario Human Rights Code, a framework has been provided for creating educational policy, acting as a guiding force that allows for discrimination to be avoided in education. Policy-makers can create policy and shape practice based on the body of educational law cases. The rights code and the charter, both subject to judicial supervision (the latter having constitutional force), provides the ability

to defend policy. Minister of Education Liz Sandals referenced the Ontario Human Rights Code when explaining why discussion of sexual orientation and gender identity were being included in curriculum. The curriculum teaches according to the rights code, which has legitimized and made acceptable to many discussion of sexual orientation and gender identity. Even though the legal system has sometimes failed to live up to its ideals, it has helped legitimate accommodation and inclusion in education by stressing human rights.

Here in Ontario, recent court cases such as the one in which Marc Hall took the Durham Catholic School Board to court in order to be allowed to take his boyfriend to his high school prom,<sup>98</sup> and the passage of Bill 13, which allows for the creation of Gay Straight Alliances (GSAs) in Catholic schools, have made it harder for even Catholic schools to discriminate on the basis of sexual orientation or gender identity.<sup>99</sup> As Bruce MacDougall has shown, courts have made clear that “colleges, schools, school boards and school officials are subject to Charter scrutiny.”<sup>100</sup> If education is concerned with “norms,” then schools, both public and Catholic, must follow the letter of the law. While curriculum issues have not yet been litigated, Bruce MacDougall believes that “that there is no reason to doubt that Charter and Human Rights Act arguments could not be made in that context.”<sup>101</sup> Catholic school rights do not trump the Charter of Rights and Freedoms, so while there may be two school systems, there will be one curriculum that both have to follow.

The Charter of Rights and Freedoms and the Ontario Human Rights Code have been able to challenge religious ideology in education. The ability to impose morality and values on students, derived from the right to practise in religious education, has been hampered. As John Long and Romulo Magsino point out, the charter is transforming public schools, including Catholic separate schools, into secular institutions due to charter-based litigation, human rights consciousness, and secularization as a social force.<sup>102</sup> While the British North America Act of 1867 does permit a publicly-funded Catholic separate school system, this is not to be achieved at the cost of liberty and equality. The Catholic school system is free to teach according to Catholic values, unless those values involve discrimination as protected by the charter. As Bruce MacDougall highlights, this is because “freedom of religion has no superior claim to protection over freedom of sexual orientation, particularly if the former means an annulment of the latter.”<sup>103</sup> However, this once again proves that the sources of opposition to inclusion of the LGBTQ+ community have come from more conservative forces than the liberal state. Curriculum should not be the product of religious dogma, rather it should be decided by human rights legislation and be inclusive. The liberal state, bolstered by the charter and the rights code, cannot allow the separate school system to discriminate against the LGBTQ+ community, even though some religious groups believe that homosexuality is immoral.<sup>104</sup> A country committed to rights-based liberalism must uphold the rights of all its citizens.

However, this does not mean that conservative interest groups have stopped pushing for references to sexual orientation and gender identity to be deleted from the curriculum. Governments choose which constituencies and voices they listen to and which ones count most, and it is possible that future governments will back down

from the opposition, or will choose to take away these hard-won gains. While the Charter of Rights and Freedoms and Ontario Human Rights Code provide a powerful way to prevent the kind of censorship that can result from such political decision-making, they are not always well enforced.<sup>105</sup> While the Health and Physical Education curriculum should be lauded, it must also continue to be defended. If anything, this paper has highlighted the process in which censorship has historically been combatted, and the strategies used to thwart the various arguments put forth for censorship in order to continue doing so. It has been demonstrated that the charter and the rights code have provided a framework for educational policy to allow for curricular inclusiveness and accommodation, and hopefully future judicial decisions will provide further guidance about equality rights and inclusiveness in education.

Ultimately, with the expansion of the prohibited grounds of discrimination under the charter and the code—which both afford protection from discrimination based on sexual orientation and gender identity—it has been harder for conservative forces to censor the LGBTQ+ community in public education. This applies to both the public and separate school systems. While a publicly-funded school system is allowed to exist and is protected by the British North America Act, it is not allowed to discriminate or censor others who do not share their same values or views on morality. The charter and the code—both liberal creations—have educational value as they defined and legitimized new social norms through rights-based equality, which makes them acceptable to a large percentage of the population. These pieces of legislation have also provided a framework for creating educational policy, acting as a guiding force that allows for discrimination to be avoided in education. A country committed to rights-based liberalism is legally required to uphold these rights, and it affects all facets of public life—like education. Censorship in education must be resisted at all costs, because it is a great disservice to all students, and to not do so would run the risk of educational malpractice.<sup>106</sup>

## Notes

- 1 Antonella Artuso, “How Dalton Failed Sex Ed.,” *Toronto Sun*, April 24, 2010.
- 2 Tabatha Southey, “Go Ahead, Teach my Kid about Sex. Please,” *Globe and Mail*, April 30, 2010.
- 3 See *Sexual Health Education in Schools across Canada: Ontario Students Deserve a Current, Research-based Curriculum that Meets their Needs in Today's Complex and Ever-changing World* (Toronto: Ontario Physical and Health Education Association, 2013).
- 4 Alvin Schrader and Kristopher Wells, *Challenging Silence, Challenging Censorship: Inclusive Resources, Strategies and Policy Directives for Addressing Bisexual, Gay, Lesbian, Trans-Identified and Two Spirited Realities in School and Public Libraries* (Ottawa: Canadian Teachers' Federation, 2007).
- 5 Bruce MacDougall, *Queer Judgements: Homosexuality, Expression, and the Courts in Canada* (Toronto: University of Toronto Press, 2000), 54.
- 6 Shaheen Shariff and Michael Manley Casimir, “Censorship in Schools: Diversity, and Cultural Coherence,” in *Interpreting Censorship in Canada*, ed. K. Peterson and A. Hutchinson (Toronto: University of Toronto Press, 1999), 159.

- 7 Terry Wotherspoon, *The Sociology of Education in Canada: Critical Perspectives*, 2nd ed. (Don Mills: Oxford University Press, 2004), 108; Ken Osborne, "Education and schooling: A relationship that can never be taken for granted," in D. Coulter, J.R. Wiens and Gerry Fenstermacher, (Eds.), *Why do we educate? Renewing the conversation* (Wiley-Blackwell, 2008) pp. 21-41).
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