

## MEMORANDUM

To Dean Sarnecki, ACSTA File: 137142-1

From Anna Loparco

Date February 11, 2018

Subject Whether signing-off of the “Notice of Religious Permeation” has to be annually or once upon registration to the school or school system.

**I. Executive Summary**

---

There are two different types of parental notice that arise from section 50.1 of the School Act: 1) the general notice of religious permeation at a school (since every aspect of the school is intended to be permeated with religion), which we recommend as a best practice be provided on an annual basis as part of the registration/confirmation forms students must complete; and, 2) the notice requirement triggered each time specific subjects taught primarily and explicitly involve human sexuality or religion. At times, the topics of religion and human sexuality intersect, such as when the unit of human sexuality is taught in Health class; in such cases, we recommend as a best practice that school boards remind parents that Catholic teachings on sexuality will be the foundation for the lessons. It is also highly recommended that Boards have a written policy regarding parental notices for topics of religion and sexuality.

The underlying principle of any notice requirement is to respect parental rights as it relates to making informed decisions for their minor children. The statutory framework is silent on the frequency that is required of a school board for providing specific parental notice. This onus will be higher for elementary students and lower for older students (e.g., showing a film with sexual scenes would require a notice in elementary school but not necessarily in high school). The Act does not require specific notices when incidental or indirect references to religion, religious themes or human sexuality in a course of study, educational program, instruction or exercises or in the use of instructional materials, such as in a biology course.

The first type of notice – general notice of religious permeation- is triggered in a more global sense because a Catholic school’s establishment and objectives are founded upon religious principles. The Catholic school philosophy of integrating the Catholic faith into every aspect of school life triggers the obligation of parental notice of the overall religious permeation at the school. In order to ensure that a Catholic school board has discharged their obligations to respect parental rights, we recommend schools obtain a Notice of Religious Permeation upon enrollment of the student for the first time and *at least* on an annual basis through a verification process.

The second type of notice is more specific and statutorily triggered each time a course of study, educational program, instructional material, instruction or exercise is planned that primarily and explicitly

deals with religion or human sexuality. This type of notice is more frequent and dictated by the nature of the course or activity planned.

## II. Analysis

---

### a. Statutory Authority Giving Rise to the Obligation of Parental Notice of Religious Permeation

The current statutory framework governing the signing off of a “Notice of Religious Permeation” is as follows:

- The *School Act* [2000] Chapter S-3 (current as of January 1, 2019);
- *Alberta Bill of Rights* [2000] Chapter A-14 (current as of March 19, 2015).

The *School Act* requires a school board to give notice to a parent or guardian when courses of study, educational programs, instructional materials, instruction or exercises include subject matter that deals primarily and explicitly with religion or human sexuality. The *Alberta Bill of Rights* entrenches parental rights to make informed decisions on their children’s education and that the parent is the primary educator of their child.

A specific reading on the sections relating to parental notice is essential to understanding the obligations the statutory scheme imposes on a school board for notice of religious permeation. Section 50.1 of the *School Act* requires a school board to give notice to a parent or guardian when courses of study, educational programs, instructional materials, instruction or exercises include subject matter that deals explicitly with religion or human sexuality. It reads as follows:

#### Notice to parent

**50.1(1) A board shall provide notice to a parent of a student where courses of study, educational programs or instructional materials, or instruction or exercises, include subject-matter that deals primarily and explicitly with religion or human sexuality.**

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

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

**(4) For greater certainty, this section does not apply with respect to the establishment or operation of a voluntary student organization referred to in section 16.1 or the organizing or holding of an activity referred to in section 16.1.**

A reading of section 50.1 imposes ongoing obligations on a school board to ensure parental rights are respected. Since religion is permeated in separate schools, they offer courses of study that primarily and explicitly deal with religion on a daily basis (e.g., whether through morning prayer, attendance at mass, referral to chaplain services or the presence of Catholic objects throughout the school). Thus, two distinct duties of parental notice for Catholic school boards arise from the provision: (1) a requirement for a general notice of religious permeation; and (2) specific notification when topic being taught primarily or explicitly involves religion and human sexuality matters.

The essential purpose of Catholic schools is to fully integrate Catholic theology, philosophy, practices and beliefs, the principles of the Gospel and teachings of the Catholic Church in all aspects of school life. Parental notice of religious permeation must be provided to ensure parents are aware of the type of education their child will be receiving in the Catholic school context.

On the other hand, the human sexuality component of section 50.1(1) of the *School Act* entails that parents receive notification of the subject matter and relevant details of any lessons that entail sex education. Similarly, when religion is being taught that is distinct and not encompassed in the religious permeation notice, or touches on a subject matter whereby the parent has not been provided notice, the school board is required to provide parental notice.

Section 50(2) of the *School Act* continues to permit a student to be excluded from religious instruction or exercises, upon written request from a parent, and mirrors similar provisions in place since the 1988 *School Act*. Section 50(2) reads as follows:

(2) Where a teacher or other person providing instruction, teaching a course of study or educational program or using the instructional materials referred to in subsection (1) receives a written request signed by a parent of a student that the student be excluded from the instruction, course of study, educational program or use of instructional materials, the teacher or other person shall in accordance with the request of the parent permit the student, without academic penalty,

(a) to leave the classroom or place where the instruction, course of study or educational program is taking place or the instructional materials are being used for the duration of the part of the instruction, course of study or educational program, or the use of the instructional materials, that includes the subject-matter referred to in subsection (1), or

(b) to remain in the classroom or place without taking part in the instruction, course of study or educational program or using the instructional materials.

Section 1 of the *Alberta Bill of Rights* enshrines parental rights to make informed decisions respecting the education of their children. It reads as follows:

1 It is hereby recognized and declared that in Alberta there exist without discrimination by reason of race, national origin, colour, religion, sexual orientation, sex, gender identity or gender expression, the following human rights and fundamental freedoms, namely:

(g) the right of parents to make informed decisions respecting the education of their children.

## ***I. Amendments to the Legislative Scheme Governing Parental Rights as it Pertains to Parental Notice***

The legislative landscape, as it pertains to parental notice, underwent significant changes in 2015, ushered in by the passing of Bill 10. First, section 11(1) of the *Alberta Human Rights Act* was repealed by Bill 10, effective March 19, 2015. Second, the *School Act* became the governing statute with respect to parental notice of religious permeation. Thirdly, the importance of parental rights to make informed decision with respect to their children's education was recognized and enshrined in the *Alberta Bill of Rights*.

The old, now repealed section of the Section 11(1) of the *Alberta Human Rights Act*, required a school board to give notice to a parent or guardian when courses of study, educational programs, instructional materials, instruction or exercises include subject matter that deals primarily and explicitly with religion, human sexuality or sexual orientation.

The repealed Section 11(1) of the *Alberta Human Rights Act*, previously read as follows:

### **Notice to parent or guardian**

**11.1(1)** A board as defined in the *School Act* shall provide notice to a parent or guardian of a student where courses of study, educational programs or instructional materials, or instruction or exercises, prescribed under that Act include subject-matter that deals primarily and explicitly with religion, human sexuality or sexual orientation.

**(2)** Where a teacher or other person providing instruction, teaching a course of study or educational program or using the instructional materials referred to in subsection (1) receives a written request signed by a parent or guardian of a student that the student be excluded from the instruction, course of study, educational program or use of instructional materials, the teacher or other person shall in accordance with the request of the parent or guardian and without academic penalty permit the student

- (a) to leave the classroom or place where the instruction, course of study or educational program is taking place or the instructional materials are being used for the duration of the part of the instruction, course of study or educational program, or the use of the instructional materials, that includes the subject-matter referred to in subsection (1), or
- (b) to remain in the classroom or place without taking part in the instruction, course of study or educational program or using the instructional materials.

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

**repeals s11.1 - effective March 19, 2015.**

Note, when conducting a search of the various school boards under the ACSTA, many school boards still referred to the *Alberta Human Rights Act* as the ruling statute giving rise to the obligation for parental notice of religious permeation. It is recommended that the information should be updated to reflect the new legislative regime of parental notice since 2015.

## ***b. Underlying Principle of Parental Notice Is To Ensure Parental Rights***

The underlying rationale of the provisions relating to parental notice, as found in the statutory framework, specifically, the *School Act* and *Alberta Bill of Rights*, is to enshrine and protect parental rights to make informed decisions for their children and in determining the education of their children.

As noted above, section 50.1(1) entails two distinct duties of parental notice for Catholic school boards: (1) notice of religious permeation; and (2) specific notification of religion and human sexuality matters.

### **Notice of Religious Permeation**

Catholic school boards adhere to the principle that the element of faith is integrated into every program and every aspect of school life, i.e., religious permeation. Catholic separate schools in Alberta are entitled and required legislatively and constitutionally, as set out in the *School Act* and the *Alberta Act, 1905*, to provide a wholly permeated Catholic education which explicitly incorporates Catholic theology, philosophy and practices in all courses of study, educational programs, instructional materials, instructions and exercises within every school day.

In the *Moose Jaw School* case (1974) the Saskatchewan Courts affirmed “that Roman Catholics expect that religion will permeate a Roman Catholic school system in all its relationships”. The doctrine of permeation was explored at length in *Public School Boards Association of Alberta v. Alberta* (1996) by Dr. Nick Kach who testified that education in Catholic separate schools prior to 1905 was conducted on an “infusion” or “permeation” basis whereby the religious or denominational aspects of the Catholic faith were “infused into or permeated every subject taught during the school day, from opening prayer through all academic classes”. The philosopher Van Cleave Morris set out that philosophy of permeation:

“It appears, for example, in the affairs of the playground, in the kind of sports that are favoured and opposed, and in the code of sportsmanship by which the young are taught to govern their behaviour. It appears in the school’s definition of the delinquent and in its mode of dealing with him .... it appears in the department of science: in the methods the young are expected to adopt in conducting their experiments .... it appears in the department of social studies: in the problems that are chosen ... in the manner in which they are discussed .... it appears in the department of literature: in the novels, the poems, the dramas that are chosen for study, in what is considered good and what is considered bad .... it appears in the organization and the government of the school .... it appears in the program for the general assemblies of the schools: in the various leaders from the community .... it appears in the way the community organizes to conduct its schools: and the provision it makes in its school grounds, buildings, and equipment, and the kind of people it chooses to serve on the school board, and in the relation of the members of the board to the ... teaching staff”.

The doctrine that Catholic schools are entitled to permeate Catholicity, Catholic teaching and Catholic dogma in all aspects of its curriculum was specifically recognized by the Supreme Court of Canada in *Hirsch* (1926), *Greater Hull* (1984), *Greater Montreal* (1989) and *Mahé* (1990), where the Courts recognized that Catholic parents would be entitled to permeate their religion in their school system by exclusive control of pedagogy, exclusive control of maintenance and support of the system, the power to hire, promote, and fire teachers on denominational grounds, and the “exclusive management and control of all aspects of the educational system”.

A Catholic school board, adhering to the principles of permeation, engages the requirement for a school board to notify parents of their objective of complete religious integration in their schools. This is a more general type of notice. Since the very operation of the school entails the integration of religious principles, we believe the notice requirement is triggered at the beginning of each year for all students and whenever a new student transfers to the school during the school year. The statutory framework determines under what circumstances parental notice must be given; however, the legislation provides no explicit guidance on the frequency that parental notice must be collected from a parent or guardian. Rather, the statutory framework only imposes an obligation on a school board to ensure it is respecting parents' rights to make decisions for their children and defers to the school board to determine how often parental notice of permeation is required.

The legislative framework places a high value on parental rights. To ensure parental rights are respected, we recommend providing notice of religious permeation to new students enrolling in a particular school, irrespective of the length of time the student may have been enrolled in Catholic education, and a follow-up verification *at least* on an annual basis. Providing an initial notice and annual verification ensures that a school board respects the ongoing rights of parents to make informed decisions for their children's education.

### **Specific Notification of Religion and Human Sexuality**

A read of the statutory provision also advises that anytime courses of study, educational programs or instructional materials, or instruction or exercises, include subject-matter that deals primarily and explicitly with religion or human sexuality (whether formally or informally) that was not the explicit subject of a previous parental notice, a new and more specific notice should be sent out. This is in addition to the general notice of religious permeation. The frequency of such notices will depend on the nature of the activity at the school.

In conclusion, the recently amended statutory scheme governs the obligations for a school board with respect to parental notice both in respect of the general obligation to inform of the school's philosophy of religious permeation and in situations where specific course or instruction primarily or explicitly involve religion or human sexuality. While the legislation sets out the circumstances when a school board must provide notice of religious permeation, it is silent on how often parental notice should be provided. The underlying principles of parental notice, as found in the legislation, is the protection of parental rights to make informed decisions about their children's education, an entrenched value in the *Alberta Bill of Rights*.

As a best practice and to avoid any uncertainty, we recommend a parent sign off on a Notice of Permeation upon enrollment, with annually verifications *at least* at the start of a new school year. However, a school board must also be cognizant that anytime a subject matter is being taught or introduced that primarily or explicitly touches upon religion or human sexuality (e.g., religion class, human sexuality unit in Health Class, a film will be shown that has explicit sexual scenes such as rape and the discussion will centre around the topic of sex). When religion and sexuality intersect in an instructional course of study, it is also best practice to remind parents that the topics will be grounded in Catholic and/gospel teachings and not secular values or positions. It is also highly recommended that Boards have a written policy regarding parental notices for topics of religion and sexuality.

