Gender and sexual diversity in schools: Educators’ Rights and Responsibilities Under the Law

Liz Meyer, Ph.D.
Elizabeth.meyer@mail.mcgill.ca

Why do educators need to understand issues relating to sexual orientation and gender identity?

To better support and work with:
- Students
  - from families with bisexual, gay, lesbian, queer, or transgender (bglqt) parents
  - who have a close friend or other family member who is bglqt
  - who are questioning their sexual orientation
  - who are targeted for bullying & harassment
  - Who identify as bglqt
- Educators
  - who identify as bglqt
  - Who have close bglqt colleagues, friends and family members

Children of gay and lesbian parents (Ray 2001)
- “I haven’t told anyone at school because I’d be teased. It feels hard to keep that secret.”
- “In Grade 6, when it was spread round the school, I cried a lot and didn’t want to go to school.”
- “They say you’re a gaybo and push me round and stuff.”
- “I wish I had someone to tell. But I can’t. I haven’t got enough guts. I’m scared.”
### Children of gay and lesbian parents

(Ray 2001)
- 45% had been the victims of teasing or bullying that was related to the sexuality of their parents
- Experienced fear and isolation in school

### Emerging identities

- Gay, lesbian, and bisexual (GLB) youth report first becoming aware of their sexual orientation at age 10 (D’Augelli & Hershberger, 1993)
- Gay adolescents report becoming aware of “being different” between ages 5-7. (Leo & Yoakum, 1992)
- GLB youth are 4 times more likely to attempt suicide than their peers. (MYRBS, 2001)

### % of students report hearing such remarks very often/often...

- Homophobic: 52%
- Sexist: 51%
- Racist: 26%
- Negative Religious: 10%

GLSEN (2005)

### How often do kids get teased or bullied?

National Mental Health Association (2002)
Impacts of bullying & harassment on students:

- Emotional problems
  - Depression & anxiety (Slee 1995, Bond 2001)
  - Loneliness (Bond 2001)
  - Low self-esteem (Coggan 2003, Bond 2001)
  - Suicidal ideation (Slee 1995, Kosciw 2001)
- Poor physical health (Slee 1995)
- Substance abuse (Kosciw 2001, CSSC 2004)

The Canadian Context

What are the legal protections and expectations that are placed on teachers and administrators?

S. 15 equality rights

- Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
Egan v. Canada, 1995

“Sexual orientation is a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs, and so falls within the ambit of s. 15 protection as being analogous to the enumerated grounds.”

1977 – Quebec Charter of Human Rights

Quebec Charter of Human Rights and Freedoms

Chapter I.1

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, ethnic or national origin, social condition, or handicap ... discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

10.1 No one may harass a person on the basis of any ground mentioned in section 10.

Quebec Human Rights Commission

Letter sent to all schools in Quebec (2001)

Called on schools to develop an “Awareness and action plan” to address homophobia as a human rights issue
Important Legal Decisions

- DECISION: sexual orientation is a deeply personal characteristic that is unchangeable or changeable only at great personal costs and should be read into s. 15 of The Charter.

Teacher Speech and Expression

Ross v. New Brunswick School Dist. 15, 1996
- September 1988 a parent, Attis complained about a teacher making racial and discriminatory statements about Jews.
- Ross had distributed pamphlets, appeared on public television and written letters printed in the local paper arguing that: “Christian civilization was being undermined and destroyed by an international Jewish conspiracy.”
Decision: Board of Inquiry

- School board had failed to discipline Ross “meaningfully” and by continuing his employment had “endorsed his out-of-school activities and writings.” This allowed a “poisoned environment” that “greatly interfered with the educational services provided.”
- Ordered school board to:
  1. Put Ross on leave of absence w/o pay for 18 months
  2. Appoint Ross to a non-teaching position if one becomes available
  3. Terminate his employment as a teacher after 18 months if a non-teaching position hasn’t been found
  4. Terminate Ross immediately if he continues to publish his anti-Jewish views

Decision: Court of Queen’s Bench

- Ross appealed this decision to the Court of Queen’s Bench
- Quashed item #4 (“gag order”) on the grounds that it violated the individual’s freedoms of expression and religion under the Charter
- The rest of the order was upheld (for Attis).
- Limiting the individual’s speech was no longer a “reasonable limit” once he had been removed from a classroom teaching position

Decision: Court of Appeal

- Ross appealed this decision to the Court of Appeal
- Justice Hoyt decided (for Ross) that the order could not stand and ruled that removing Ross from the classroom violated his rights to freedom of expression and religion, and that the order could not be upheld under the Charter, because it was directed at activities outside of the classroom.

Decision: Supreme Court of Canada

- Attis appealed this decision to the Supreme Court of Canada (SCC)
- The court decided that the “gag order” did infringe on Ross’ freedom of expression and freedom of religion, and the goal of achieving balance between individual rights and community needs.
- Removing Ross from his teaching position (point 1, 2, & 3) was justifiable because the removal was rationally connected to creating a “discrimination-free learning environment”
“The continued employment of the respondent contributed to an invidiously discriminatory or ‘poisoned’ environment... this finding is necessarily linked to the finding that the respondent’s statements are ‘highly public’ and that he is a notorious anti-Semite, as well as the supported view that public school teachers assume a position of influence and trust over their students and must be seen to be impartial and tolerant.” ~Justice LaForest

Kempling v. B.C. College of Teachers, 2004

Facts:
- February 2004, teacher and guidance counselor, Chris Kempling, was suspended by BCCT for 1 month for “conduct unbecoming” to a teacher.
- Kempling had written letters published in a local paper that were considered defamatory of homosexuals and signed them as a teacher and counselor.
- Kempling appealed this decision to the Supreme Court of British Columbia.

Decision
- Supreme Court of BC (for BCCT) held that the BCCT was within its jurisdiction to suspend him.
- Rationale:
  - Due to the “wrongful public linking of his professions position to the off-duty expression of personally held discriminatory views in order to lend credibility to those views.”
  - The limitations on his freedom of expression were justified by the school’s duty to maintain a tolerant and discrimination-free environment.
  - Discriminatory statements by a teacher regarding his or her professional duties harmed the integrity of the school system.
- Kempling appealed to BCCA and was dismissed
Kempling cont’d

- As his case progressed he continued to give media interviews that repeated earlier statements.
- In 2003, a formal letter of reprimand was sent from the Quesnel School District.
- The disciplinary action was taken with the stated goal of “ensur[ing] that there is no poisoned environment for either students in schools or staff working in Board facilities in the District. District schools must remain places where there is sensitivity to issues and where an atmosphere of tolerance and respect exist.”

Kempling cont’d

- In 2005 he ran for local office and wrote another letter to the editor criticizing the recently proposed Bill C-38, the Civil Marriage Act, which allowed same-sex couples to marry.
- Quesnel School District suspended him for three months
- On 28 January 2008, Kempling was cited again by the BCCT for “conduct unbecoming” a teacher
- June 2008, Kempling announced that he was leaving the public school system to work for a private school, allowing him to relinquish his BCCT certification.

Trinity Western v. B.C. College of Teachers (2001)

- “to live together as responsible citizens, to pursue biblical holiness, and to follow an ethic of mutual support, Christian love in relationships, and to serve the best interests of each other and the entire community.” The standards emphasize, “total respect for all people regardless of race, gender, location, status, or stage of life .”
- The standards also prohibit "sexual sins including premarital sex, adultery, homosexual behaviour, and viewing pornography" (Trinity Western University, 2000, pp. 189-190). (Cited in Van Brummelen & Sawatsky, 2002)
March 1996

- BCCT rejected TWU's application because "it does not fully meet the criteria and because it is contrary to the public interest to approve a Teacher Education Program offered by a private institution which appears to follow discriminatory practices that public institutions are, by law, not allowed to follow."

Supreme Court of Canada (2000)

- The issue at the heart of this appeal is how to reconcile the religious freedom rights of individuals wishing to attend TWU with the equality concerns of students in B.C.'s public school system, concerns that may be shared with their parents and society in general. (TWU v. BCCT, 2001, par. 28)

Decision

- TWU students were held to have the right to "adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others" (TWU v. BCCT, 2001, par. 35).

  • **Beliefs v. conduct**: Teachers can hold "sexist, racist, or homophobic beliefs" but they may not act on them. “Discriminatory conduct by a public school teacher on duty should always be subject to disciplinary proceedings.”

  • BCCT failed to provide proof that TWU's teachers acted in a discriminatory manner towards their students.

Curriculum

- Kindergarten teacher
- 3 books banned by school board
- Appealed to Supreme Court of Canada

Decision

- First, the Board violated the principles of secularism and tolerance in s. 76 of the Act. Instead of proceeding on the basis of respect for all types of families, the Board proceeded on an exclusionary philosophy, acting on the concern of certain parents about the morality of same-sex relationships, without considering the interest of same-sex parented families and the children who belong to them in receiving equal recognition and respect in the school system.

- Second, the Board departed from its own regulation with respect to how decisions on supplementary resources should be made, which required it to consider the relevance of the proposed material to curriculum objectives and the needs of children of same-sex parented families.

- Third, the Board applied the wrong criteria. It failed to consider the curriculum’s goal that children at the K-1 level be able to discuss their family models, and that all children be made aware of the diversity of family models in our society. ... The Board erred in relying on concerns about cognitive dissonance and age-appropriateness which were foreclosed by the curriculum in this case.

DECISION: the question of whether to approve the books was remanded to the Board.

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Discussion

- When you bring up the topic of diverse families in your classroom, how would you address the following situations:
  - A student who says in class, “My religion says gays and lesbians are bad. I can’t talk about this.”
  - A parent who calls to complain that your class violates his family’s religious beliefs and wants you to remove all content and materials that talk about bisexuals, gays, and lesbians.

Bullying and Harassment

- Board of School Trustees v. Jubran (2005)
  - Discrimination based on sexual orientation

Facts

- Azmi Jubran was harassed by his peers over a period of 5 years (1993-1998)
  - Anti-gay slurs, spit on, kicked, shirt burned, slammed into lockers, etc.
  - Filed HR complaint against the school district in June 1996
  - For “discriminating against him regarding an accommodation, service or facility customarily available to the public because of his sexual orientation”
  - September 2000 – HRT hearing

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Issues

- Must a person who complains of discriminatory harassment on the basis of sexual orientation actually be a homosexual or perceived by his harassers as homosexual?
- Is a school board responsible where the conduct of the students violates the code?

Human Rights Tribunal Decision (April 2002)

- Decided in Jubran’s favor
- Awarded $4500 in damages for injury to dignity, feelings and self-respect

Supreme Court of B.C. decision (January 2003)

- Mr. Justice A.M. Stewart quashed the Tribunal’s decision
- Jubran “is not a homosexual and the students who attacked him did not believe he was a homosexual,” he should not be accorded the protections offered by the code.

British Columbia Court of Appeal decision (April 6, 2005)

- Madam J. Levine reinstated the HR Tribunal ruling and $4,500 award due to the HR’s correct application of HR codes.
  - Human Rights Code states, “A person must not...discriminate against a person...because of the sex or sexual orientation OF THAT PERSON OR CLASS OF PERSONS.”
  - HR codes must have a “large and liberal interpretation as will best ensure the attainment of their objects”
- October 2005 Supreme Court of Canada refuses to hear the appeal, earlier ruling stands.

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elizabeth.meyer@mail.mcgill.ca
Can the school board be held liable for the conduct of its students?

- the school administrators took a disciplinary approach that was “effective vis-à-vis individual students who were identified and dealt with, it was not effective in reducing the harassment of Mr. Jubran” (para. 68)
- the School Board has the duty to provide students with an educational environment that does not expose them to discriminatory harassment (Kafe c. CS Deux-Montagnes 1993)

How the school board failed to meet its duty:

1. “the school board did nothing to address the issue of homophobia or homophobic harassment with the students generally,
2. nor did it implement a program designed to address that issue.
3. Neither Mr. R. or Mr. S. were given any guidance or direction by the School Board on how to deal with the situation.
4. administration had inadequate tools to work with, and insufficient training and education to deal with the harassment. The School Board has failed to discharge its burden of demonstrating that it accommodated Mr. Jubran to the point of undue hardship.” (para. 160-161)

Discussion

You overhear a student in the back making fun of another student. You don’t hear everything, but you see that the student is visibly upset and she tells you, “he called my mom a lesbian!” What do you do?

Implications for educators

- If you are aware that harassment is going on – even if it hasn’t been officially reported – the school is considered to “have notice” and can be held responsible for not acting.
- Talk to a mentor and get guidance on how to handle specific incidents. The politics and policies of schools vary greatly.
- READ and KNOW your school board’s and school’s policies & your role in implementing them.
- Be clear on the difference between discriminatory beliefs and conduct.
Quebec policies – educators’ responsibilities

Quebec Education Act

- 22. A teacher shall
  - (1) contribute to the intellectual and overall personal development of each student entrusted to his care;
  - (2) take part in instilling into each student entrusted to his care a desire to learn;
  - (3) take the appropriate means to foster respect for human rights in his students;
  - (4) act in a just and impartial manner in his dealings with his students;
  - (5) take the necessary measures to promote the quality of written and spoken language;
  - (6) take the appropriate measures to attain and maintain a high level of professionalism.

Quebec Policy in the fight against homophobia

- 26. Any natural person may file a complaint with the Minister against a teacher for a serious fault committed in the exercise of his functions or for an act derogatory to the honour or dignity of the teaching profession.

- 37. The educational project of the school must respect the freedom of conscience and of religion of the students, the parents and the school staff.

http://www.justice.gouv.qc.ca/francais/publications/rapports/homophobie.htm

March 2007

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Summary of Recommendations for MELS:

1. **train school personnel**
2. **inform school monitors & bus drivers**
3. Ask CEGEPS to include info in education and health & social services courses
4. Sensitize members of the teacher education programs committee to examine their training programs and integrate info
5. Encourage Universities to integrate info in education, health & social sciences domains
6. Encourage the educational resources committee to create a list of resources and models to be adopted
7. **Encourage school administrations to acquire resources to demystify homophobia**
8. To enjoin school boards to consider these realities in complementary services - esp. promotion & prevention - and that staff be informed
9. To sensitize student services administrators at CEGEPs so that can put local or regional activities in place
10. **Collaborate with the Provincial working group on violence, youth, and schools group to put in place prevention measures**
11. Encourage members of the Provincial working group on violence, youth, and schools working group to organize ongoing sensitization activities
12. **Distribute information to teaching personnel info in the magazine Vie Pedagogique about educational programs**
13. Continue to apply the approach of "Healthy schools" in supporting participation of LGBT community groups
14. Take into consideration the realities of sexual minority youth in bullying and violence prevention action plans
15. Support research or studies on: the amount of homophobia in schools & its impacts; the degree of comfort of teaching personnel, the impact of homophobia on youth and same-sex families; the impact of homophobia on teachers and sexual minority teachers
16. **Encourage school administrations to organize and support activities against homophobia, notably the international day against homophobia**
17. Adopt terminology in administrative documents to include same-sex parents on official documents
18. Training in police technique programs
19. National police school integrate information in its training program

Action Plan Against Violence in Schools

- September 24, 2009
- Response from MELS to recommendations

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May 2009 – recommendations included in Violence action plan

1. train school personnel
2. inform school monitors & bus drivers
8. To enjoin school boards to consider these realities in complementary services - esp. promotion & prevention - and that staff be informed
14. Take into consideration the realities of sexual minority youth in bullying and violence prevention action plans

Action Plan against Homophobia in Schools

- October 19, 2010

QEP - Curriculum

1. connaître et reconnaître les comportements homophobes et les conséquences de ces comportements;
2. fournir des réponses adéquates aux questionnements des jeunes concernant la diversité sexuelle;
3. rendre disponibles des documents liés à la diversité sexuelle et rendre visibles ces réalités dans les bibliothèques scolaires;
4. démythifier l’homosexualité et la diversité sexuelle;
5. sensibiliser l’ensemble des élèves, le personnel enseignant, les intervenants et les parents aux manifestations d’hétérosexisme, aux préjugés, aux répercussions et à la stigmatisation dont les personnes de minorités sexuelles sont victimes, plus particulièrement les jeunes;
6. distinguer les mythes de la réalité quant aux personnes de minorités sexuelles (les gais, les lesbiennes, les personnes bisexuelles, transsexuelles, transgenres ou qui s’interrogent sur leur identité sexuelle) ou issues de familles homoparentales;
7. enseigner l’importance de rapports égalitaires, de comportements inclusifs et de relations saines et respectueuses;
8. soutenir les initiatives et favoriser les occasions et lieux de rencontre entre élèves de la diversité sexuelle et élèves hétérosexuels.
Ethique and Culture Religieuse

- vie spirituelle et d'engagement communautaire
- Mettre sur pied des activités ou programmes qui visent le développement du respect, l'ouverture d'esprit et l'acceptation des différences:
  - croyances, race, goûts et champs d'intérêt, sexe, couleur, religion, handicap, origine ethnique, condition sociale, langue, orientation sexuelle, etc.

QEP – elementary

- moral education Chp 9.2:
  - relationships in groups (Family)
  - engage in moral dialogue (discrimination)
  - Difficulties in relationships with people who are different (examples of differences that are sometimes sources of difficulties: gender, race, sexual orientation, preferences, social condition) - Cycle3 (Grades 5/6)
  - the short- and long-term effects on oneself, others and society, if applicable, of certain choices pertaining to interpersonal relationships, sexuality, the use of cigarettes and drugs, and leisure activities - Cycle3 (Grades 5/6)

Sex Education (2003)

- age 5:
  - Identification of differences and similarities between the bodies of girls and boys
  - Assertion of one’s own sexual identity, while respecting the differences and diversity of others
- age 6-11: Identification of the multidimensional aspects of sexuality (biological, psychoaffective, sociocultural, interpersonal and moral)
- age 12-17: Understanding of the phenomenon of sexual orientation and adoption of respectful attitudes toward various sexual orientations

MELS Teaching Competency #1

- To act as a professional who is inheritor, critic, and interpreter of knowledge or culture when teaching students.
  - Situates the discipline’s basic benchmarks and points of understanding (concepts, postulates, and methods) in order to facilitate significant, in-depth learning by students.
  - Adopts a critical approach to the subject matter.
  - Establishes links between the secondary culture set out in the program and the secondary culture of the students.
  - Transforms the classroom into a cultural base open to a range of different viewpoints within a common space.
  - Casts a critical look at his or her own origins, cultural practices and social role.
MELS Teaching Competency #12

- To demonstrate ethical and responsible professional behaviour in the performance of his or her duties.
  - Understands the values underlying his or her teaching.
  - Manages his or her class in a democratic way.
  - Provides students with appropriate attention and support.
  - Justifies his/her decisions concerning the learning and education of students.
  - Respects confidentiality.
  - Avoids any form of discrimination towards students, parents, or colleagues.
  - Situates the moral conflicts arising in class with reference to the major schools of thought.

Activity

- How can you integrate this information in a unit or lesson that you already teach?
- What resources could you use?
- What resistance might you get from families or colleagues?
- How can you prepare to address this resistance?

For more information:

- My webpage: [http://sites.google.com/site/lizjmeyer/](http://sites.google.com/site/lizjmeyer/)
- My twitter: [www.twitter.com/lizjmeyer](http://www.twitter.com/lizjmeyer)
- My bookmarks: [www.delicious.com/lizjmeyer](http://www.delicious.com/lizjmeyer)
- Contact me: elizabeth.meyer@mail.mcgill.ca