Recommendations to the Standing Committee on Social Policy

Re: Bill 13, Accepting Schools Act

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1. The Canadian Civil Liberties Association applauds the spirit and intention of Bill 13 to protect vulnerable students from the kind of bullying and harassment that can transform an important educational and developmental experience into a terrifying and traumatic experience, and to offer students some of the resources and protections they need when they are the subject of bullying.

2. CCLA stresses the need to tread carefully, be mindful of countervailing considerations and fundamental rights, and not overreach in an attempt to legislate in these developing areas.

3. CCLA recommends that the words “or another name” be removed from clause 9 – subsection 303.1(d) of Bill 13.
   a. It is critical that any proposed legislation be drafted in a manner that respects and protects the Charter rights of students.
   b. The decision as to how a student club is named should, barring any justified educational restriction, be determined by the members of that club.
   c. The students in the club have the right to choose the name of their club, based on their fundamental and constitutionally protected freedoms.
   d. Moreover, if certain school boards are violating student rights, and singling out LGBTQ students for discriminatory treatment, it is this Assembly’s responsibility to rectify the situation, and protect the youth from further harm to their dignity and potentially their safety.

4. Bill 13 should be amended to include “transphobia” and “gender identity” where “homophobia” and “sexual orientation” are listed.

5. Given the possibility that legitimate expressions of thought or belief could be censured, CCLA submits that the definition of bullying should be revisited – at least with respect to discipline.
   a. The definition of bullying determines the types of behaviour and speech that could lead to discipline, it should be defined with internal constraints, and with a view to the fundamental rights of all students.
   b. Such a definition should be sensitive to minority voices and unpopular views.
c. Such a definition should also protect students’ basic rights, and should make explicit mention of the rights of students to freedom of expression, association and equality.

d. By narrowing the definition of bullying or harassment that is subject to discipline, one should not infer that teachers cannot respond to other behaviours that fall short of this threshold.

6. It should be incumbent on school boards, administrators, social workers, teachers and staff to use various educational methods, whether or not the speech in question is subject to discipline. Thus, for example, educators should be alert to and obliged to consider intervening (including teaching) in situations that do not approach the punishable threshold, such as those that may be non-aggressive and not targeted, but are insensitive, and create an uncomfortable environment.

7. CCLA submits that in defining bullying for the purposes of a punishable offence under the bill, it is also important to explicitly note that the offence should only refer to behaviour affecting a pupil.

8. Where possible, schools should be encouraged to consider preventive and rehabilitative strategies, and should not require mandatory suspensions.

9. CCLA is concerned that the proposed disciplinary measures — and in particular, mandatory suspensions — are overly punitive and do not preserve the principal’s discretion to respond to a situation based on the circumstances.

10. CCLA submits that in introducing disciplinary measures for bullying, Bill 13 should provide for a requirement that schools periodically monitor how students from minority groups are impacted and whether there is a disproportionate impact on certain groups.