

LGBTQ Rights in Schools

Canadian Civil Liberties Association
Canadian Civil Liberties Education Trust

According to a Canadian research survey¹ published in 2011:

70%

of students reported hearing
“That’s so gay” every day in school

48%

reported hearing words like
“faggot” or “dyke” every day

58%

of straight students reported that
they find homophobic comments
upsetting

64%

of LGBTQ students and 61% of students
with LGBTQ parents reported that they
felt unsafe in school

LGBTQ students and students with LGBTQ parents
experience much higher levels of verbal and physical
harassment and abuse than other students

21%

of LGBTQ students reported being physically
harassed or assaulted because of their
sexual orientation

What works to prevent homophobic and transphobic bullying?

Anti-homophobia policies and gay-straight alliances

Studies have shown that LGBTQ students feel safer and more accepted **when they know their schools have policies and procedures that explicitly address homophobia.** A Canadian study from 2011 found that LGBTQ students from schools with such policies reported significantly fewer incidents of physical and verbal harassment due to their sexual orientation. They were exposed to fewer homophobic and transphobic comments – and they were more likely to report **feeling respected in their school community.**² By contrast, the researchers found that “generic safe schools policies that do not include specific measures on homophobia are not effective in improving the school climate for LGBTQ students.”³

Research also shows that **gay-straight alliances (GSAs)** contribute to making schools safer for LGBTQ students. The 2011 survey confirmed

that students attending schools with GSAs are much more likely to agree that their school communities are supportive of LGBTQ individuals.⁴ Recently, researchers surveyed a small group of educators throughout Ontario. A majority of respondents (over 85%) said the presence of GSAs had a positive impact on school climate for LGBTQ students.⁵

What are your rights under Canadian law?

The *Charter* protects freedom of expression, freedom of association, and equality

First and foremost, the *Canadian Charter of Rights and Freedoms* guarantees everyone – including high school students – **freedom of expression, freedom of association and equality**.⁶

Freedom of expression protects your right to express yourself – through your words, your writing and even what you wear. Wearing a rainbow T-shirt, putting up posters with LGBTQ-positive quotations or hosting a guest speaker would all be exercises of freedom of expression. Freedom of association protects your right to join and organize groups, from trade unions to political parties to social clubs. The CCLA believes that creating a gay-straight alliance and hosting LGBTQ-inclusive events could be protected by freedom of association. Finally, the *Charter* provides that all Canadians are entitled to **equal treatment under the law**, regardless of factors like race, gender, sexual orientation or gender identity. Treating GSAs differently than other student clubs could violate the *Charter* right to equality.

Like all *Charter* rights, these rights and freedoms can be limited, but only if the school proves that such limits are reasonable and justifiable in the circumstances.⁷

In addition, every province and territory has human rights legislation that **prohibits discrimination based on sexual orientation and/or gender identity**.⁸ Under this legislation, students have the right to learn in an environment free from discrimination and harassment based on sexual orientation and/or gender identity. **Discrimination can take different forms.** In the school context, for example, it could include actions by school administrators, or teachers failing to respond appropriately when students engage in homophobic or transphobic bullying. If a teacher or school administrator threatens to share information related to your sexual orientation or gender identity without your consent, in some cases this might constitute discrimination – particularly if the school is retaliating against you for trying to assert your rights.⁹

In a few cases, students in several Canadian provinces have filed human rights complaints against their schools for discriminating against them or failing to protect them from homophobic or transphobic harassment.¹⁰ In each province and territory, a human rights tribunal or commission is tasked with receiving and deciding complaints, based on the facts and arguments at hand.

Human rights law gives you the right to equality at school

What does Ontario law

say about homophobia, transphobia and bullying in schools?

In Ontario, you have **additional legal rights** under the *Education Act* – the law that governs primary and secondary schooling (public and Catholic) in the province.¹¹ In 2012, the Ontario government introduced significant changes to the *Education Act*, aimed at fighting bullying and fostering safer school communities for all students.¹² In addition, the Ministry of Education has developed numerous policy documents that schools are required to follow.

Safe and inclusive schools

According to the *Education Act*, the purpose of education is “to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society.”¹³ Every other part of the *Act* should be understood with this purpose in mind. Like all students in Ontario, LGBTQ students have the right to “a safe, inclusive and accepting learning environment” – which is crucial for helping students realize their full potential.¹⁴

Gay-straight alliances

You have a clear legal right to create a gay-straight alliance in your school – and to use the name “gay-straight alliance” or a similar name if you choose.¹⁵

School boards are required to support students who want to establish and lead groups that promote a safe and inclusive learning environment. This includes groups that promote gender equity, anti-racism, respect for people with disabilities and respect for “people of all sexual orientations and gender identities.” The legislation explicitly states that neither the school board nor the principal can refuse to allow students to use the name “gay-straight alliance” or a similar name for their group. In other words, if students want to start a gay-straight alliance, **they cannot be forced to choose another, “less controversial” name.**

School boards may not be required to support the creation of a GSA or similar club **unless at least one student wants to establish and lead it.** This means some schools may require students to step forward and actively work to establish a GSA. This could be problematic in schools where students are interested in establishing a gay-straight alliance but none are able to assume active leadership.

The definition of bullying

Bullying is defined as **aggressive and typically repeated behaviour** by a student, where s/he intends or should know that the behaviour will cause harm, fear or distress to another individual or create a negative environment at school for another individual.¹⁶ Bullying occurs “**in a context where there is a real or perceived power imbalance**” between the parties.¹⁷ This definition of bullying would include incidents based on homophobia and transphobia, but would not necessarily include every situation where a student uses homophobic or transphobic language.

Ontario law explicitly mentions “**cyber-bullying**,” which could include posting on social media, sending email or impersonating another person on the Internet.

Homophobic & transphobic language

When students engage in bullying or other inappropriate behaviour, they may be subject to disciplinary consequences at school.

Teachers are legally required to report to the principal when they become aware of a serious student incident. This includes bullying, threatening to physically harm someone, and sexual assault.¹⁸

Not all incidents of homophobia or transphobia will necessarily meet the definition of “bullying.” However, **homophobic and transphobic comments are considered disrespectful and inappropriate.**¹⁹ Moreover, teachers have a responsibility to create a safe and inclusive environment in their classrooms.²⁰ According to the Ministry of Education, teachers and school staff must respond to any student behaviour that is “likely to have a negative impact on the school climate.” This includes bullying, swearing, homophobic or racial slurs, sexist comments or jokes, graffiti or vandalism.²¹

Student privacy

Can school staff share information about your sexual orientation or gender identity, without your consent, to your parents or other individuals? The answer depends on the context.²² Unfortunately, at this time, Ontario law may not adequately protect student privacy.

The CCLA takes the position that **students have a right to privacy**, particularly with respect to their sexual orientation and gender identity. In circumstances where a school wishes to disclose this information to parents or guardians without the student’s consent, the school should have to justify this disclosure.

School board policies

School boards have a broad obligation to prevent bullying and to “**promote a positive school climate that is inclusive and accepting of all pupils**” – regardless of factors like race, gender, sexual orientation or gender identity.²³

School boards are required to develop and implement three documents:

- A bullying prevention and intervention policy.²⁴
- A discipline policy.²⁵
- A plan for combatting bullying.²⁶ School boards must consult with parents, students, staff and community members when developing these plans. The plans must be publicly available (for instance, posted on school websites).

Under the *Education Act*, these policies must deal with behaviour, discipline and safety. These policies **must recognize that incidents based on homophobia and transphobia are inappropriate** – and they must provide for appropriate responses to problematic student conduct, such as providing support and resources to students affected by bullying.

The CCLA believes that, as part of the school boards’ responsibility to foster a safe and positive school environment, boards should ensure that **students are aware of the anti-homophobia and anti-transphobia policies they have in place**. Research shows this helps improve the school climate for LGBTQ students.²⁷

Anti-bullying training

Ontario school boards must establish **annual professional development programs** to educate teachers and staff about bullying prevention and strategies for fostering a positive school climate.²⁸

The CCLA takes the position that school boards should offer training that addresses the unique issues of homophobia and transphobia.

School climate surveys

School boards are required to conduct “**school climate surveys**” every two years to collect information from students, parents and staff.²⁹ These surveys are intended to help school officials identify problems and **understand whether students feel safe and accepted at school**.

Participation in these surveys is voluntary for parents and students. Moreover, the surveys are anonymous – school boards cannot collect any name or identifying information. According to the Ministry of Education, these surveys must include questions on bullying and harassment related to sexual orientation, gender identity and gender expression.³⁰ Schools are required to craft strategies to address any problems identified through their climate surveys.

The CCLA believes that, as a general rule, the results of school climate surveys should be made available to the public.

What actions are students across Canada taking?

What are schools doing to help?

Across Canada, some governments and schools and many students are working to create respectful, inclusive and accepting school communities for all young people. Some school boards have adopted specific policies that **recognize the unique challenges faced by LGBTQ students, staff and family members**. Here are some examples:

Yukon Territory

The Yukon Territory requires all high schools to implement **proactive strategies to welcome and include LGBTQ community members and their families**.³¹ All principals must appoint one school staff member as a “safe contact” to provide support for sexual and gender minority students. And principals must visually mark an area within the school

as “welcoming and reaffirming” for LGBTQ students and staff – for instance, by using posters and positive quotes. Yukon policy clearly states that LGBTQ students have the right to counselling that is supportive and free from efforts to change their sexual orientation or gender identity.

In June 2014, students at Vanier Catholic Secondary School in Whitehorse wanted to show support for LGBTQ students. The school had experienced controversy due to language posted on its website that described homosexuality in negative terms. As a response, 45 graduating students at Vanier (more than half the graduating class) showed their support by wearing **rainbow-striped knee socks** to their cap-and-gown ceremony.³²

In 2011, Edmonton Public Schools introduced a comprehensive policy to support LGBTQ students, staff and families. Under the policy, school principals must support the establishment of gay-straight alliances where students have expressed interest. They must also ensure that staff members appropriately address any sexist, homophobic or transphobic comments or behaviours. The school board participates in the Edmonton Pride Festival and Pink Shirt Day every year. Plus, the school board has district consultants who provide guidance and support to GSAs, **including hosting monthly meetings to allow GSA members to network and share strategies**.³³

Edmonton

Vancouver

The Vancouver School Board first implemented a sexual orientation and gender identity policy in 2004. In June 2014, a board committee recommended that the school board approve revisions to the policy that will add further detail about the rights of LGBTQ community members. The draft policy emphasizes that LGBTQ students and

families should see themselves and their lives **positively reflected in the curriculum**. Moreover, **the draft policy explicitly lays out the rights of trans students** – for instance, to be addressed by their preferred name and pronoun.³⁴

Resources

Canadian Civil Liberties Association (CCLA)

The CCLA works to protect fundamental rights and freedoms across the country. In recent years, we have provided support and advice to a number of LGBTQ students who were experiencing discrimination at school because of their sexual orientation or gender identity. If you are facing unreasonable barriers from your school to creating a GSA, or facing discrimination by your school on the basis of sexual orientation or gender identity, you can email the CCLA at publicenquiries@ccla.org.

(Note: Please do not use this email address if you are facing an emergency, since the CCLA does not monitor this email account around the clock. As a non-profit organization with limited resources, we are unable to respond to emails immediately – although you should certainly indicate if your issue is time-sensitive or pressing.)

Justice for Children and Youth (JFCY)

Justice for Children and Youth (JFCY) is a specialized legal clinic in Ontario that promotes and advocates for the dignity and legal rights of young people. They have lawyers on staff who provide legal information, assistance and advice to youth. The JFCY website provides resources and information on legal issues that impact young people – for instance, the JFCY blog has a post addressing LGBTQ rights in Ontario schools: <http://www.jfcy1.blogspot.ca/2012/11/lgbt-rights-in-ontario-schools.html>.

MyGSA.ca

Includes a wealth of information and resources for students, educators and parents. The website includes tips and strategies for writing a proposal to create a GSA, ideas for meetings and events, suggestions of LGBTQ-positive books and movies, and even a calendar of LGBTQ-inclusive events across the country.

Ministry of Education

The Ontario Ministry of Education website includes comprehensive information about preventing bullying and harassment, promoting a positive school climate, student discipline and more. Available online at: <http://www.edu.gov.on.ca/eng/safeschools/bullying.html>.

Kids Help Phone

A free, anonymous, confidential hotline where youth aged 20 and under can speak to a professional counselor 24/7. Call 1 (800) 668-6868. Kids Help Phone maintains a list of national and regional resources, links and organizations for LGBTQ youth: see <http://kidshelpphone.ca/Teens/InfoBooth/LGBTQ/SexualOrientation/links.aspx>. Their website also includes resources related to LGBTQ issues, such as coming out stories submitted by young Canadians.

Disclaimer

This resource is intended to provide general information about law and policy in Ontario and Canada in July 2014. If you are facing a specific legal problem, you may require individualized legal advice that is tailored to your situation. You may wish to consider speaking with a lawyer.

References

- ¹ The study surveyed over 3700 Canadian high school students between December 2007 and June 2009. Catherine Taylor and Tracey Peter, *Every class in every school: The first national climate survey on homophobia, biphobia and transphobia in Canadian schools* (Toronto: EGALE Canada Human Rights Trust, 2011). Available online at: <http://egale.ca/wp-content/uploads/2011/05/EgaleFinalReport-web.pdf>.
- ² *Ibid*, pages 114-15.
- ³ *Ibid*, page 18. These results mirror American research: see for example Joseph G Kosciw et al, “The 2011 national school climate survey” (New York: Gay, Lesbian & Straight Education Network, 2012). Available online at: <http://glsen.org/nscs>.
- ⁴ Taylor and Peter, pages 127-31.
- ⁵ Julian Kitchen and Christine Bellini, “Making schools safe and inclusive: Gay-straight alliances and school climate in Ontario,” *Canadian Journal of Educational Administration and Policy*, Issue No. 146 (19 October 2013). Available online at: http://www.umanitoba.ca/publications/cjeap/pdf_files/kitchen_bellini.pdf.
- ⁶ *Canadian Charter of Rights and Freedoms*, sections 2(b), 2(d) and 15.
- ⁷ The Canadian Civil Liberties Education Trust recently produced an interactive “Prezi” to help students decide what limits on rights and freedoms are reasonable. Available online at: <http://prezi.com/6qe-52nj1cre/cclet-presents-the-acorn-test-for-ages-12-and-up>. In addition, the Ontario Justice Education Network (OJEN) has several resources on the *Charter* and LGBTQ rights. Available online at: <http://www.ojen.ca>.
- ⁸ Every jurisdiction in Canada (including the federal government) has a human rights law that explicitly mentions sexual orientation. Some provincial and territorial human rights laws also mention gender identity and/or expression. In other provinces and territories, gender identity and/or expression are understood to be included in the law. For examples of human rights laws that explicitly mention gender identity and/or expression, see the Ontario *Human Rights Code*, RSO 1990 chapter H-19 and the Northwest Territories *Human Rights Act*, SNWT 2002 chapter 18, preamble and section 5(1).
- ⁹ See, for example, the Ontario *Human Rights Code*, RSO 1990 chapter H-19, section 8 and the *Canadian Human Rights Act*, RSC 1985 chapter H-6, section 14.1.
- ¹⁰ For instance, in 1996, Vancouver high school student Azmi Jubran filed a complaint against his school board under the British Columbia *Human Rights Code*. The Human Rights Tribunal concluded that Jubran’s school board “failed to provide an educational environment free from discriminatory harassment.” See *School District No. 44 (North Vancouver) v Jubran*, 2002 BCHRT 10, affirmed 2005 BCCA 201, leave to appeal denied 2005 CanLII 39611 (SCC).
- ¹¹ *Education Act*, RSO 1990 chapter E-2 (as amended). Parts of the *Education Act* apply to private schools in the province.
- ¹² Bill 13, *Accepting Schools Act*, SO 2012 chapter 5. The legislation came into effect on 1 September 2012. For the CCLA’s position on an early draft of the legislation, please consult: <http://ccla.org/2012/05/23/cclas-submissions-on-bill-13-the-anti-bullying-and-gay-straight-alliance-bill>.
- ¹³ *Education Act*, subsection 0.1(2).
- ¹⁴ Ontario Ministry of Education PPM No. 144, “Bullying Prevention and Intervention,” page 1. Available online at: <http://www.edu.gov.on.ca/extra/eng/ppm/144.pdf>.
- ¹⁵ *Education Act*, subsections 303.1(1)(d) and 303.1(2). Some religious schools have suggested that this requirement could violate their *Charter*-protected freedom of religion, but this argument has not been brought before the courts.
- ¹⁶ *Ibid*, section 1.

¹⁷ Under the *Education Act*, the target or victim of bullying could be another student, a teacher or an administrator. However, in situations where a student allegedly bullied a staff member, the “power imbalance” requirement might come into play.

¹⁸ *Education Act*, Part XIII.

¹⁹ *Ibid*, section 300.0.1.

²⁰ Under the provincial Code of Conduct, teachers and other school staff “are expected to hold everyone to the highest standard of respectful and responsible behaviour.” According to the Code of Conduct: “All students, parents, and teachers and other school staff have the right to be safe, and to feel safe, in their school community. With this right comes the responsibility to contribute to a positive school climate.” See Ontario Ministry of Education PPM No. 128, “The Provincial Code of Conduct and School Board Codes of Conduct.” Available online at: <http://www.edu.gov.on.ca/extra/eng/ppm/128.pdf>. See also *Education Act*, subsection 300.4(1).

²¹ Ontario Ministry of Education PPM No. 145, “Progressive Discipline and Promoting Positive Student Behaviour,” page 7. Available online at: <http://www.edu.gov.on.ca/extra/eng/ppm/145.pdf>.

²² See, for example, *Education Act*, subsection 266(3) and section 300.3; *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990 chapter M-56, subsection 54(c); *A Guide to Ontario Legislation Covering the Release of Students’ Personal Information*, Information and Privacy Commissioner of Ontario (June 2011). Available online at: <http://www.ipc.on.ca/images/Resources/educate-e.pdf>.

²³ *Education Act*, subsections 169.1(1)(a.1) and (a.2).

²⁴ *Ibid*, subsection 302(3.4).

²⁵ *Ibid*, subsection 302(2).

²⁶ *Ibid*, section 303.3.

²⁷ See Taylor and Peter, pages 114-22, discussed above.

²⁸ *Education Act*, subsection 170(1).

²⁹ *Ibid*, subsection 169.1(2.1).

³⁰ Ontario Ministry of Education PPM No. 145, “Progressive Discipline and Promoting Positive Student Behaviour,” at page 7. Available online at: <http://www.edu.gov.on.ca/extra/eng/ppm/145.pdf>.

³¹ Yukon Education, “Sexual Orientation and Gender Identity Policy” (5 September 2012). Available online at: [http://www.education.gov.yk.ca/pdf/sogi_policy_updated_dec_14\(1\).pdf](http://www.education.gov.yk.ca/pdf/sogi_policy_updated_dec_14(1).pdf).

³² CBC News, “Vanier Catholic graduates wear rainbow socks to ceremony” (2 June 2014). Available online at: <http://www.cbc.ca/news/canada/north/vanier-catholic-graduates-wear-rainbow-socks-to-ceremony-1.2662481>.

³³ Edmonton Public Schools, “Sexual Orientation and Gender Identity.” Available online at: <http://www.epsb.ca/ourdistrict/topics/sexualorientationandgenderidentity>.

³⁴ Vancouver School Board, “Sexual Orientation and Gender Identities” (ACB and ACB R-1). The new draft policy and regulations are available online at: http://www.vsb.bc.ca/sites/default/files/14Jun11_op_commlII_report_for%20approval.pdf.

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