



Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

Gouvernement du Canada
Mission permanente du Canada
auprès des Nations Unies et de
la Conférence du désarmement

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Reference: Canada's response to OL CAN 4/2018

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the joint letter OL CAN 4/2018 from the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Working Group on the issue of discrimination against women in law and in practice, dated 20 December 2018. The Permanent Mission of Canada further has the honour to submit Canada's response.

The submission consists of one document.

The Permanent Mission of Canada to the Office of the United Nations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 7 May 2019.

RESPONSE OF CANADA TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

Introduction

1. On December 19, 2018, seven Special Rapporteurs, Independent Experts and Working Groups of the United Nations (UN) Office of the High Commissioner for Human Rights sent a Joint Communication to Canada: reference OL CAN 4/2018.
2. The Government of Canada, on its behalf and on behalf of the Government of Ontario, welcomes the opportunity to respond to this Communication.
3. Canada takes very seriously its international human rights obligations and is committed to maintaining a constructive dialogue with UN mechanisms, including the Special Procedures, which are a vital aspect of a strong and effective international human rights system. Canada thus engages with the Special Procedures in good faith, and provides the following information in response to the Communication.
4. Canada has a robust human rights framework that is working effectively to address this issue openly and accountably through the legislative policy development process, public consultations and discussion facilitated by a free press, and before Canada's courts and tribunals.

Legal framework for the protection of human rights in Canada

5. The legislative, executive and judicial branches of government, at all levels of government in Canada, share responsibility for the protection of human rights and the implementation of international human rights treaty obligations. Relevant legislation is enacted by Parliament and the provincial and territorial legislatures.
6. The *Canadian Charter of Rights and Freedoms* (Charter) applies to federal, provincial and territorial legislatures and governments to ensure the protection of individuals from violations of their human rights and fundamental freedoms by government. In particular, section 2 of the Charter guarantees the fundamental freedoms of conscience and religion, of thought, belief, opinion and expression, of peaceful assembly and of association. Section 15 of the Charter protects against discrimination, and guarantees the right to equality before and under the law, and the right to the equal benefit and protection of the law without discrimination, and in particular, without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. The courts have interpreted section 15 to include other analogous grounds, such as sexual orientation. The rights and freedoms in the Charter are subject "...only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society"¹.

¹ *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c.11, section 1.*

7. In addition, all governments in Canada – federal, provincial and territorial – have adopted human rights legislation prohibiting discrimination on various grounds in regard to employment matters, the provision of goods, services and facilities customarily available to the public, and accommodation. Generally, human rights codes prohibit discrimination on the grounds of race or colour, religion or creed, age, sex, sexual orientation, gender identity or expression, family or marital status, physical or mental handicap or disability, national or ethnic origin and ancestry or place of origin. Human rights legislation differs in its application from the right to equality in section 15 of the Charter in that it provides protection against discrimination by individuals in the private sector, as well as by governments. In Ontario, teachers and students alike enjoy the protections under the *Ontario Human Rights Code*.

Redress for human rights violations

8. In Canada, various modes of redress for human rights violations are available, depending on the nature of the right infringed and the form of remedy sought.
9. The courts have jurisdiction to determine whether there have been violations of the Charter, including civil claims alleging Charter violations. In this regard, the Ontario Divisional Court has dismissed a constitutional and human rights challenge to Ontario's interim 2018 Health and Physical Education curriculum, holding that the curriculum does not infringe freedom of expression or life, liberty and security of the person and does not discriminate on the basis of sex, sexual orientation, gender identity, gender expression or other protected grounds: see *ETFO et al. v. Her Majesty The Queen*, 2019 ONSC 1308.
10. If a challenge based on the Charter is successful, the courts may declare a law of no force and effect pursuant to section 52 of the *Constitution Act, 1982*. Section 24 of the Charter permits anyone whose Charter rights have been infringed or denied to apply to a court of competent jurisdiction for an appropriate and just remedy.
11. The primary means of enforcing human rights codes and legislation is through the human rights commissions or tribunals established under them. Although the functions of these bodies vary, common functions include the determination or conciliation of complaints of discrimination brought under the relevant legislation. If the commission or tribunal concludes that a person has engaged in a discriminatory practice, it may make an order, which is enforceable through the court. The person who has engaged in the discriminatory practice may be ordered to cease such practice, to take measures to reverse the effects of discrimination, such as rehiring the victim, to pay compensation and/or to adopt an affirmative action program. Decisions of commissions or tribunals are subject to judicial review by the courts.
12. The common law also contains remedies for violations of some human rights – for example, damages including compensation may be sought for wrongful dismissal from employment.

13. These forms of redress are all available to both students and teachers in Ontario for any human rights violations. In addition, teachers have a variety of employment related protections available to them under the comprehensive labour relations scheme in place in Ontario².
14. The following information is provided by the Government of Ontario in response to the questions raised in the Joint Communication.
15. The Government of Ontario states that the *Ontario Curriculum, Grades 1-8: Health and Physical Education, Interim Edition (re-issued 2018)* does not contravene or infringe on any provisions of the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of Persons with Disabilities*, the *Convention on the Rights of the Child* or the *International Covenant on Civil and Political Rights*.
16. The Government of Ontario has not been provided directly with the information received by the Special Procedures concerning Ontario's curriculum change and therefore cannot respond directly to the allegations contained therein. However, it appears from the Joint Communication that much of the information received by the Special Rapporteurs is incorrect. The Government of Ontario would like to take this opportunity to clarify the following:
 - a. The *Ontario Curriculum, Grades 1-8: Health and Physical Education, Interim Edition (re-issued 2018)*, which was issued on August 22, 2018 and is in effect during the 2018-2019 school year, is the same curriculum document that was issued effective September 2010, not 1998. Prior to the 2018-2019 school year, this curriculum was last taught from September 2010 to June 2015.
 - b. The Joint Communication indicates that "Between July and August 2018, several adjustments were made to provincial legislation in order the effect this change."³ In fact, no legislation was amended to effect the change in curriculum.
 - c. The Joint Communication indicates that the 2018 curriculum omits "description of the reproductive process and the parts of the body involved."⁴ This is incorrect. The 2018 curriculum provides that students are expected to learn about human reproductive processes,⁵ to relate the changes at puberty to the reproductive organs and their functions,⁶ and to explain the male and female reproductive systems as they relate to fertilization.⁷

² *School Boards Collective Bargaining Act*, 2014, SO 2014, c. 5 and *Labour Relations Act*, 1995, SO 1995, c. 1, Sched. A.

³ Joint Communication OL CAN 4/2018 at p. 1.

⁴ *Ibid.* at p. 2.

⁵ *Ontario Curriculum, Grades 1-8: Health and Physical Education, Interim Edition (re-issued 2018)* at p. 112, available at: <http://www.edu.gov.on.ca/eng/curriculum/elementary/healthcurr18.pdf>

⁶ *Ibid.* at p. 163.

⁷ *Ibid.* at p. 184.

- d. The Joint Communication indicates that there is a “reliance on sexual abstinence as the only method of sexual protection suggested by the 1998 curriculum for grade 7.”⁸ This is incorrect. In addition to providing that students are expected to learn to “explain the term *abstinence* as it applies to healthy sexuality”, the 2018 curriculum also provides that Grade 7 students are expected to learn to “describe age-appropriate matters related to sexuality (e.g., the need to develop good interpersonal skills, such as the ability to communicate effectively with the opposite sex)”,⁹ to “identify the methods of transmission and the symptoms of sexually transmitted diseases (STDs), and ways to prevent them”,¹⁰ to “use effective communication skills (e.g., refusal skills, active listening) to deal with various relationships and situations”,¹¹ and to “identify sources of support with regard to issues related to healthy sexuality (e.g., parents/guardians, doctors).”¹²
- e. The Joint Communication indicates that the 2018 curriculum lacks discussion of “differences among people such as colour, race, disability, sexual orientation and gender identity and the need for acceptance and appreciation of diversity.”¹³ This is also incorrect. The 2018 curriculum states, for example, that teachers should “ensure that all students – students of all cultures, abilities, genders, and sexual orientations – feel included and recognized in all activities and discussions.”¹⁴ The 2018 curriculum also states that it is “critical to student success to create an atmosphere in which students of all body shapes and sizes, abilities, gender identities and sexual orientations, and ethnocultural, racial, and religious backgrounds can feel accepted, comfortable, and free from harassment”,¹⁵ and that “In an environment based on the principles of inclusive education, all students, parents, and other members of the school community – regardless of ancestry, culture, ethnicity, sex, physical or intellectual ability, race, religion, gender identity, sexual orientation, socio-economic status, or other similar factors – are welcomed, included, treated fairly, and respected. Diversity is valued, and all members of the school community feel safe, comfortable, and accepted.”¹⁶
17. The Government of Ontario has publicly committed to making changes to Ontario’s education system to help students acquire the skills they need to be safe and healthy and to succeed in the changing economy and to ensure that parents have meaningful input into what their children are learning. To this end, the Government of Ontario has conducted a broad and robust province-wide public consultation process focussed on engaging parents, students, educators and interested individuals or organizations.

⁸ Joint Communication OL CAN 4/2018 at p. 2.

⁹ Ontario Curriculum, Grades 1-8: Health and Physical Education, Interim Edition (re-issued 2018) at p. 184.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Joint Communication OL CAN 4/2018 at p. 2.

¹⁴ Ontario Curriculum, Grades 1-8: Health and Physical Education, Interim Edition (re-issued 2018) at p. 47.

¹⁵ *Ibid.* at p. 11.

¹⁶ *Ibid.* at p. 57; see also pp. 145, 146, 212, 217 and 218.

18. From September 2018 to December 2018, many tens of thousands of Ontarians provided their submissions on topics of educational concern that included: improving student performance in Science, Technology, Engineering and Math (STEM); preparing students with needed job skills, such as skilled trades and coding; improving provincial standardized testing; ensuring students graduate with important life skills, including financial literacy; managing the use of technology in classrooms, such as cell phones; building a new age-appropriate Health and Physical Education curriculum that includes subjects like mental health, sexual health education and the legalization of cannabis; and developing the first-ever Parents' Bill of Rights.
19. The public consultation concluded on December 17, 2018. Feedback from the consultation will help to inform the development of a new, age-appropriate Health and Physical Education curriculum, intended to come into effect in September 2019.
20. As an interim measure pending the consultation and the development and introduction of the new curriculum, Ontario re-issued the same curriculum document that was in place from September 2010 to June 2015. As explained further below, for the 2018-19 year, all Health and Physical Education classroom programs for students in publicly-funded schools for Grades 1 to 8 (that is, for students aged 5 to 13) are to be developed based on this curriculum. The Health and Physical Education curriculum for Grades 9 to 12 is not affected by this change.
21. On March 15, 2019, the Government of Ontario announced its plans to modernize the province's elementary Health and Physical Education curriculum, which will reflect research, benchmarking with other jurisdictions, and information gathered from the recent consultation. The revised curriculum, which will be in place for the 2019-2020 school year, will include mandatory learning about topics such as the proper names for body parts (including genitalia), consent, sexual orientation, gender identity and expression and sexually transmitted infections.
22. This response provides a general outline of Canada's legal framework for the protection of human rights, Ontario's education system and the role of provincial curriculum within it, the basic features of the Health and Physical Education curriculum, a description of the province-wide consultation recently underway in Ontario to develop a new, up-to-date and age-appropriate Health and Physical Education curriculum for students in Ontario's publicly-funded schools and the planned revisions to the curriculum for the 2019-2020 school year.

The education system in Ontario

23. Education is a provincial government responsibility in Canada. In Ontario, education is governed principally by the provincial *Education Act*, R.S.O. 1990, c. E.2, and its regulations. The *Education Act* and its regulations set out duties and responsibilities of the Minister of Education and the duties and responsibilities of school boards, school board supervisory officers, principals, teachers, parents and students.

24. The Minister of Education is the member of the provincial cabinet with responsibility for the development of education policy. With the assistance of the Ministry of Education, the Minister also administers the provincial statutes and regulations that concern education. The Minister is also responsible for issuing curriculum guidelines and requiring that courses of study be developed therefrom, and setting policies and guidelines for school trustees, directors of education, principals and other school board officials.
25. Ontario's school boards operate the province's publicly-funded schools. The boards administer the funding they receive from the province for their schools. School boards are responsible for: supervising the operation of schools and their teaching programs; hiring teachers and other staff; teacher performance; and ensuring schools abide by the *Education Act* and its regulations. School principals are responsible for the organization and management of individual schools, including any budget assigned to the school by the school board. They are also responsible for the quality of instruction at their school and for student discipline.
26. Teachers are responsible for preparing lesson plans and teaching classes, supervising student behaviour and maintaining classroom discipline, and evaluating student work and progress. Teachers are members of the Ontario College of Teachers, which regulates the teaching profession and governs its members. The Ontario College of Teachers is responsible for:
- f. setting requirements for teaching certificates and maintaining a provincial register of teachers;
 - g. setting standards for teacher training programs at Ontario universities, and monitoring the training programs to ensure they meet the standards;
 - h. developing codes of conduct for teachers; and
 - i. investigating complaints against teachers and making decisions about teacher discipline and fitness to practice.
27. Teachers in Ontario's publicly-funded schools are the employees of school boards, not employees of the Ministry of Education or the provincial government. Teachers are regulated in their professional capacities by the Ontario College of Teachers, not by the provincial government.

The role of curriculum in publicly-funded schools

28. The Ontario *Education Act* provides that the Minister of Education may "issue curriculum guidelines and require that courses of study be developed therefrom." Curriculum guidelines describe the knowledge and skills that students are expected to learn by the end of a grade or course.
29. The Ontario curriculum is implemented by the province's publicly-funded schools. School boards supervise the operation of the schools and their teaching programs. They also ensure that schools comply with the *Education Act* and its regulations. Principals are

responsible for the organization and management of schools and for the instruction of students in the Ontario curriculum.

30. Teachers deliver the curriculum to their students via a course of study. In the elementary school context, courses of study are delivered through a classroom program. Elementary teachers plan their classroom programs based on learning expectations, and use professional judgment to develop lessons and choose teaching strategies and resources, taking into account the needs and abilities of the students in their classes. Teachers have a duty under the *Education Act* to “teach diligently and faithfully the classes or subjects assigned to the teacher by the principal.”
31. The Ontario curriculum is composed of curriculum documents for each subject (e.g. mathematics, health and physical education). There are eight elementary curriculum documents in Ontario.
32. Each curriculum document is itself comprised of “front matter”, curriculum expectations, and teacher supports that include examples, sample teacher prompts, and sample student-teacher interactions. The “front matter” provides important foundational information about the curriculum itself and how the learning expectations within the curriculum relate to the Ministry’s policies, programs, and priorities. This information is intended to support schools and teachers in planning their classroom programs. It provides direction and guidance to teachers on how the curriculum is to be implemented.
33. Curriculum expectations describe the knowledge and skills that students are expected to learn by the end of a grade or course in a subject matter. In other words, they describe *what* the students learn. Expectations are mandatory, and courses of study and classroom programs in each grade must be developed from these learning expectations. There are two types of learning expectations in the Ontario curriculum: overall expectations and specific expectations. The overall expectations describe in general terms the knowledge and skills that students are expected to demonstrate by the end of each grade or course. The specific expectations describe the expected knowledge and skills in greater detail. Taken together, the overall and specific expectations make up the mandatory Ontario curriculum.
34. The learning expectations in the curriculum are “scaffolded”, meaning that the learning in each grade becomes increasingly complex as students move through the grades, building on learning expectations from previous grades. Classroom programs must be designed so that the learning expectations for each grade are taught in those grades, and students are assessed and evaluated in relation to the expectations for their own grade level, rather than some other or higher grade level. This ensures a degree of consistency across the province in terms of what students can expect to learn and in which grades. It also reflects the growing abilities and maturity of students as they move through the grades.
35. The overview section for each division of the 2018 Health and Physical Education curriculum illustrates the progressive and scaffolded learning to be achieved through Grades 1-3, 4-6, and 7-8:

Grades 1-3: In the primary grades, students are introduced to basic health concepts, given opportunities to apply this knowledge to decisions about their own health, and encouraged to make connections between their health and well-being and their interactions with others and the world around them. Particular emphasis is placed on having students learn how to take responsibility for their own safety, at home and in the community, how to stand up for themselves, and how to get help in situations of abuse. Students also learn to understand and apply basic concepts related to healthy food choices, healthy relationships, diversity, and substance use and potentially addictive behaviours. They learn the names of body parts, begin to understand how their bodies work and develop, and acquire an understanding of some of the factors that contribute to healthy physical and emotional development (page 69).

Grades 4-6: In the junior grades, students continue to develop an understanding of the factors that contribute to their health and the health of others in their family and community, but with a particular focus on choices and decisions connected to their personal health. Their ability to make healthy eating decisions is further developed as they acquire additional knowledge about nutrition and nutritional labelling, and as they learn how to understand and manage their food choices and set healthy eating goals for themselves. As they become more independent and more responsible for their own safety and that of others, they also learn how to assess risk, respond to dangerous situations, and protect themselves from a variety of social dangers, including bullying, abuse, violence, and technology-related risks. They learn about the hazards of tobacco, alcohol, illicit drugs, and addictive behaviours and develop the decision-making and communication skills needed to resist pressures to engage in risky behaviour. Because students at this age are approaching or beginning puberty, the curriculum expectations provide an opportunity for students to develop the knowledge and skills that they will need to understand the physical, emotional, and social changes that they are experiencing or are about to go through. Topics include reproduction, self-concept, relationships, stress management, and decision making. Students who are well informed, who have had the opportunity to do some thinking in advance, and who have been able to practise the appropriate decision-making skills are likely to make wiser decisions about their health (page 115).

Grades 7-8: Students will continue to learn about the factors that contribute to healthy development and consider how that information connects to their personal health choices and to the health of others in the world around them. In the intermediate grades, they will focus on making connections between their own health and the health and well-being of those around them. Grade 7 and 8 students add to their knowledge of healthy eating practices by acquiring a deeper understanding of nutritional concepts and the relationship between nutrition and disease, as well as learning more advanced approaches to managing their own food intake, making healthy food choices, and promoting healthy eating to others. The study of personal safety and injury prevention expands to include situations

that students in these grades may encounter as they become more independent and active in a wider variety of situations and environments, including online and virtual environments. Students also consider the consequences of bullying, harassment, and violent behaviour and examine ways of preventing or responding to it. Expectations relating to substance use, addictions, and related behaviour introduce them to linkages with mental health and stress, expand their understanding of the personal and social consequences of addictions, and examine how concerns with body image, which are very prevalent at this age, can lead to problematic substance use. The Growth and Development expectations from the 1998 curriculum document focus on age-appropriate questions related to human sexuality. Students have opportunities to explore the physical, emotional, interpersonal, and spiritual aspects of healthy sexuality, and to develop the communication skills they need to express their concerns and feelings in these areas. They also learn to identify local sources of support related to sexuality and sexual health. Students are expected to develop an understanding of reproductive systems, the possible consequences of risky behaviours, pregnancy and disease prevention, and abstinence as a positive choice for adolescents (page 167-168).

36. In addition to the curriculum expectations, the curriculum document includes teacher supports, in the form of examples, sample teacher prompts and sample student-teacher interactions. These illustrate *how* students may achieve the learning expectations. These teacher supports are not mandatory, and teachers are not required to use any of them. Rather, they are included throughout the curriculum documents to illustrate the complexity and depth of the learning students are expected to achieve. Teachers may or may not use the supports provided in the curriculum document, or they may develop their own approaches.
37. In designing classroom programs, teachers may also draw from a wide range of available teaching resources and strategies. For example, teachers may draw on sample lesson plans, activities, webpages, books, videos, posters, surveys, and other tools, which may be prepared by not-for-profit organizations, for-profit organizations, teacher associations, and school boards. Ontario does not require teachers to use any particular teaching resources or strategies. Instead, teachers are left to exercise their professional judgment to choose the resources they believe will help their students achieve the learning expectations.
38. The curriculum document combines the learning expectations (*what* students learn in each grade) with teacher supports (*how* students might learn), while giving teachers the flexibility to choose appropriate resources and teaching strategies.
39. The curriculum document is not a script. Teachers are largely left free to determine, in the exercise of their professional judgment, how to design classroom programs to achieve the learning expectations set out in the curriculum, and how to implement those classroom programs for a diverse and heterogeneous class of individual students, all of whom will have their own individual strengths and abilities.

40. However teachers choose to implement the classroom program, they are directed to do so in an inclusive way. As stated in the 2018 curriculum:

Whatever the specific ways in which the requirements outlined in the expectations are implemented in the classroom, they must, wherever possible, be inclusive and reflect the diversity of the student population and the population of the province (page 16).

41. Nor do the curriculum documents prescribe a list of prohibited words or phrases that may not be used in the classroom. If a particular topic is not specifically mentioned in the curriculum document, teachers may use their professional judgment in determining whether and how to address that topic in the course of achieving a learning expectation that *is* mandated.
42. The Health and Physical Education curriculum expectations are designed so that teachers have substantial discretion in deciding how to teach them. No particular script or list of prohibited or mandatory words is provided. As with other subject matters, teachers can choose, in the exercise of their professional judgment, how to design classroom programs to achieve the learning expectations in each grade set out in the curriculum, and how to implement those classroom programs for a diverse and heterogeneous class of individual students, all of whom will have their own individual strengths and abilities. As stated in the 2018 curriculum, “The curriculum expectations are age-related but not age-dependent – the readiness of students to learn will depend on their individual physical and emotional development” (pages 6-7).
43. What the curriculum would *not* permit is the design or implementation of a classroom program for a particular Grade in which students were not taught and evaluated on the expectations specified for that Grade, or in which students were taught and evaluated on the expectations prescribed for a different Grade. For example, teachers are not free to design classroom Health and Physical Education programs for Grade 5 students where they are expected to learn and be evaluated and assessed on the Grade 6 (or higher) expectations. Whether in Math, Health and Physical Education or any other topic, teachers are not permitted to design and implement classroom programs in which students are assessed on the expectations prescribed for higher grades (for example, Grade 1 students should not be assessed on Grade 8 learning expectations). To this extent, the structure and scaffolding of the curriculum is mandatory in publicly-funded schools.
44. It follows from the above that the issuance of the curriculum does not infringe anyone’s right to freedom of opinion or expression. The curriculum is not a script or a list of prohibited words. It does not prohibit teachers from discussing topics or answering questions, including those relating to matters not included in the curriculum. It does not prevent teachers or anyone else from expressing their opinions on any topic. It does not prescribe any lesson plans, teaching approaches, teacher resources, educational materials, or classroom activities. It does not prohibit teachers from communicating up-to-date or factually-accurate information. The curriculum requires teachers to assess students in

publicly-funded schools on the curriculum expectations for their subject and grade and cover those expectations in teaching those subjects and grades.

45. The professional requirement on teachers in publicly-funded schools “to teach diligently and faithfully the classes or subjects assigned to the teacher by the principal” in accordance with the provincial curriculum does not infringe freedom of expression. As the Joint Communication notes, “teachers in principle are bound to teach in accordance with the curriculum in force.”¹⁷ The requirement for teachers in publicly-funded schools to teach the provincial curriculum is not, as it is described in the Joint Communication,¹⁸ a “sanction” or a “measure taken to threaten or punish teachers”, but rather a professional obligation undertaken by regulated professionals who elect to work in publicly-funded institutions. To the extent that teachers’ expression is engaged by fulfilling this public duty, teachers exercise their freedom when they choose to teach in publicly-funded schools. A teacher who does not wish to follow the provincial curriculum is free to teach in a private, non-state school. There is no requirement on teachers to follow the provincial curriculum if they do not teach in publicly-funded schools.
46. In any event, teachers in publicly-funded schools are the employees of school boards (and not of the provincial Ministry) and are regulated in their professional capacity by the Ontario College of Teachers (and not by the provincial Ministry). The Government of Ontario is not aware of any steps taken either by school boards or by the College to discipline or sanction teachers in relation to any conduct related to the implementation of the 2018 curriculum.

The Ontario 2018 Health and Physical Education curriculum

47. The Ontario Health and Physical Education curriculum helps students develop an understanding of what they need in order to make a commitment to lifelong healthy, active living and to develop the capacity to live satisfying, productive lives.
48. The learning expectations in the Health and Physical Education curriculum are organized into three broad learning areas or “strands”: Active Living, Movement Competence, and Healthy Living. The learning in all of these strands is intended to be integrated. For example, the Health and Physical Education curriculum provides a set of “living skills” – personal, interpersonal, and critical and creative thinking skills – that are to be taught and evaluated in each grade, in conjunction with the learning in all three Health and Physical Education strands. As noted in the 2018 curriculum:

The living skill expectations are to be taught and evaluated in conjunction with learning in each of the strands; they cannot be addressed in isolation. They make the learning in health and physical education personally relevant to students, as

¹⁷ Joint Communication OL CAN 4/2018 at p. 2.

¹⁸ *Ibid.* at pp. 2 and 6.

students learn to apply them in a variety of contexts that relate to their everyday lives.¹⁹

49. The Healthy Living strand includes four “topics” or components: i) Healthy Eating; ii) Personal Safety and Injury Prevention; iii) Substance Use, Addictions, and Related Behaviours; and iv) Growth and Development. This strand is aimed towards helping students develop 1) an understanding of the factors that contribute to healthy development, 2) a sense of personal responsibility for lifelong health, and 3) a respect for their own health in relation to others and the world around them. The Healthy Living strand is intended to equip students with the skills they need to “develop, maintain, and enjoy healthy lifestyles as well as to solve problems, make decisions, and set goals that are directly related to their personal health and well-being. Learning how to establish, monitor, and maintain healthy relationships is a key part of this strand” (page 29). Students are also encouraged “to make connections beyond themselves to understand how their health is connected with that of others and is affected by factors in the world around them” (pages 29-30).
50. The 2018 curriculum includes a number of learning expectations and examples related to effective communication and healthy relationships, including “stating boundaries”, “active listening”, and “decision-making, problem-solving, and refusal skills”, including the following:

By the end of Grade 1, students will:	demonstrate the ability to recognize caring behaviours (<i>e.g., listening with respect, giving positive reinforcement, being helpful</i>) and exploitive behaviours (<i>e.g., inappropriate touching, verbal or physical abuse, bullying</i>), and describe the feelings associated with each (page 81)
By the end of Grade 2, students will:	<p>explain the importance of standing up for themselves, and demonstrate the ability to apply behaviours that enhance their personal safety in threatening situations (<i>e.g., speaking confidently; stating boundaries; saying no; reporting exploitive behaviours, such as improper touching of their bodies or others' bodies</i>) (page 96)</p> <p>communicate effectively, using verbal or non-verbal means, as appropriate, and interpret information accurately as they participate in physical activities, develop movement competence, and acquire knowledge and skills related to healthy living (<i>e.g., [...] Healthy Living: effectively communicate their objections or refusal to participate if someone is doing something that they do not like</i>) (page 87)</p>

¹⁹ Ontario Curriculum, Grades 1-8: Health and Physical Education, Interim Edition (re-issued 2018) at p. 18.

<p>By the end of Grade 4, students will:</p>	<p>identify the characteristics of healthy relationships (e.g., showing consideration of others' feelings by avoiding negative communication) (page 132)</p> <p>identify the challenges (e.g., conflicting opinions) and responsibilities in their relationships with family and friends. (page 132)</p>
<p>By the end of Grade 5, students will:</p>	<p>demonstrate the ability to deal with threatening situations by applying appropriate living skills (e.g., <i>personal skills, including self-monitoring and anger management; interpersonal skills, including conflict resolution skills; communication skills, including assertiveness and refusal skills</i>) and safety strategies (e.g., <i>having a plan and thinking before acting; looking confident; being aware of surroundings; seeking help; drawing on cultural teachings, where appropriate, to analyse situations and develop responses</i>) (page 145)</p> <p>identify factors (e.g., trust, honesty, caring) that enhance healthy relationships with friends, family, and peers (page 147)</p>
<p>By the end of Grade 6, students will:</p>	<p>apply personal skills and interpersonal skills (e.g., <i>self-awareness and self-management skills, including anger management; communication skills, including listening skills and assertiveness skills</i>) to promote positive interaction and avoid or manage conflict in social situations (e.g., <i>classroom groups, groups of friends, sports teams, school clubs</i>) (page 161)</p> <p>communicate effectively, using verbal or non-verbal means, as appropriate, and interpret information accurately as they participate in physical activities, develop movement competence, and acquire knowledge and skills related to healthy living (e.g., <i>[...] Healthy Living: describe what verbal and non-verbal signals could be used to send messages to others about how you feel about them</i>) (page 151)</p>
<p>By the end of Grade 7, students will:</p>	<p>describe age-appropriate matters related to sexuality (e.g., the need to develop good interpersonal skills, such as the ability to communicate effectively with the opposite sex) (page 184)</p> <p>use effective communication skills (e.g., refusal skills, active listening) to deal with various relationships and situations (page 184)</p>

By the end of Grade 8, students will:	<p>apply living skills (e.g., decision-making, problem-solving, and refusal skills) to respond to matters related to sexuality, drug use, and healthy eating habits (page 201)</p> <p>apply living skills (e.g., decision-making, assertiveness, and refusal skills) in making informed decisions, and analyse the consequences of engaging in sexual activities and using drugs (page 201)</p>
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51. The 2018 curriculum also defines “active listening” as “A communication skill in which the listener focuses closely on the speaker’s verbal and nonverbal messages and summarizes these messages to confirm understanding” (page 209).
52. The 2018 curriculum is therefore particularly concerned with the health, safety and well-being of students and with giving students the living skills and effective communication and decision-making skills to engage in healthy relationships, including sexual relationships. The Joint Communication’s statement that the Ontario curriculum results in the “exclusion of discussion of consent in sexual relations”²⁰ is incorrect. Discussion of and teaching about consent in sexual relations is fully consistent with the curriculum expectations set out above.
53. The “Growth and Development” component of the 2018 curriculum includes topics related to sexual health. The 2018 curriculum notes that “Growth and development education is more than simply teaching young people about the anatomy and physiology of reproduction. For example, growth and development education focuses on an understanding of sexuality in its broadest context – sexual affection, abstinence, body image, and gender roles. Acquiring information and skills and developing attitudes, beliefs, and values related to identity and relationships are lifelong processes” (pages 32-33).
54. The sexual health components of the Ontario health and physical education curriculum include curriculum expectations such as the following:
- a. identify the stages in development of humans (Grade 1);²¹
 - b. describe parts of the human body, the functions of these parts, and behaviours that contribute to good health (Grade 2);²²
 - c. outline characteristics in the development and growth of humans from birth to childhood (Grade 3);²³
 - d. identify the characteristics of healthy relationships (Grade 4);²⁴

²⁰ Joint Communication OL CAN 4/2018 at p. 5.

²¹ *Ibid.* at p. 83.

²² *Ibid.* at p. 98.

²³ *Ibid.* at p. 112.

²⁴ *Ibid.* at p. 132.

- e. identify strategies to deal positively with stress and pressures that result from relationships with family and friends; identify factors (e.g., trust, honesty, caring) that enhance healthy relationships with friends, family, and peers (Grade 5);²⁵
- f. apply a problem-solving/decision-making process to address issues related to friends, peers, and family relationships (Grade 6);²⁶
- g. use effective communication skills (e.g., refusal skills, active listening) to deal with various relationships and situations (Grade 7);²⁷
- h. identify sources of support (e.g., parents/guardians, doctors) related to healthy sexuality issues (Grade 8);²⁸
- i. demonstrate an understanding of factors (e.g., acceptance, stigma, culture, religion, media, stereotypes, homophobia, self-image, self-awareness) that can influence a person's understanding of their gender identity (e.g., male, female, two-spirited, transgender, transsexual, intersex) and sexual orientation (e.g., heterosexual, gay, lesbian, bisexual), and identify sources of support for all students (Grade 9);²⁹ and
- j. apply their knowledge of sexual health and safety, including a strong understanding of the concept of consent and sexual limits, and their decision-making skills to think in advance about their sexual health and sexuality (Grade 9).³⁰

55. All of the topics included in Ontario's Health and Physical Education curriculum are valuable learning expectations for students, irrespective of their sex, gender, sexual orientation, gender identity or other personal characteristics. All of them can and must be taught in an inclusive manner that is appropriate and relevant to students of diverse genders, sexualities, families and circumstances. As set out below, provincial law and policy requires school boards, schools and teachers to implement the curriculum in a way that is inclusive, respectful of diversity, and non-discriminatory.

Laws and policies in place in Ontario to ensure a safe and inclusive learning environment

56. School boards are required to provide safe, inclusive, and accepting learning environments for all students. Laws, ministry programs and policies directed at supporting equity and diversity and at eliminating bullying and discriminatory conduct in schools continue to protect students, including LGBTQ2S+ students. These laws and policies are in place to ensure that all students are taught in a safe, equitable and inclusive learning environment free from discrimination. Such laws and policies are not affected by the change in the curriculum. Teachers must deliver any curriculum in a manner consistent with these requirements.

²⁵ *Ibid.* at p. 147.

²⁶ *Ibid.* at p. 163.

²⁷ *Ibid.* at p. 184.

²⁸ *Ibid.* at p. 201.

²⁹ Ontario Curriculum, Grades 9-12: Health and Physical Education, Interim Edition, 2015 at p. 104, available at <http://www.edu.gov.on.ca/eng/curriculum/secondary/health9to12.pdf>

³⁰ *Ibid.* at p. 105.

57. The Ontario *Human Rights Code*, R.S.O. 1990, c. H 19, protects students against discrimination based on sex, sexual orientation, gender identity and gender expression, among other grounds. Teachers and school boards are required to comply with the Code. The Ontario *Education Act* also requires boards to “promote a positive school climate that is inclusive and accepting of all pupils” including those of any “sex, sexual orientation, gender identity [or] gender expression.”
58. Ontario’s Equity and Inclusive Education Strategy was launched in 2009. The Strategy helps the education community understand, identify, and remove discriminatory biases and systemic barriers in order to support student achievement and well-being. Barriers identified in the Strategy included sex, sexual orientation, gender, gender identity, and their intersection (page 11).
59. Ontario’s “Equity and Inclusive Education in Ontario Schools: Guidelines for Policy Development and Implementation” were released by the provincial government in 2014. These Guidelines are designed to help Ontario school boards review and/or continue to develop, implement, and monitor equity and inclusive education policies that support student achievement and well-being, in accordance with the principles and commitments set out in the Ministry’s policy directives (page 8). The Guidelines recognize that in reviewing, revising, or refining their board equity and inclusive education policies, each board has the flexibility to take into account local needs and circumstances such as geographical considerations, demographics, cultural needs, and the availability of board and community support and resources (page 14).
60. Ontario’s “Foundations for a Healthy School: Promoting well-being is part of Ontario’s Achieving Excellence vision” was released by the provincial government in 2014. This document is intended to support the integration of healthy schools policies, programs and initiatives into school and school board planning and implementation processes by focusing on five interconnected areas: Curriculum, Teaching & Learning; School & Classroom Leadership; Student Engagement; Social & Physical Environments; and Home, School, & Community Partnerships.
61. The Ministry of Education also issues policy directives to school boards and school authorities in the form of Policy/Program Memoranda (or “PPMs”), which outline the Ministry’s expectations regarding the implementation of ministry policies and programs.
62. PPM 119, entitled “Developing and Implementing Equity and Inclusive Education Policies in Ontario Schools”, identifies three core priorities for the education system: 1) high level of student achievement; 2) reduced gaps in student achievement; and 3) increased public confidence in publicly funded education. PPM 119 recognizes that “[a]n equitable, inclusive education system is fundamental to achieving these core priorities” (page 1). The purpose of PPM 119 “is to provide direction to school boards on the review, development, implementation, and monitoring of equity and inclusive education policies to support student achievement and well-being” (page 2). PPM 119 notes that “such factors as race, sexual orientation, physical or mental disability, gender, and class can intersect to create additional barriers for some students” (page 2).

63. PPM 119 defines inclusive education as “Education that is based on the principles of acceptance and inclusion of all students. Students see themselves reflected in their curriculum, their physical surroundings, and the broader environment, in which diversity is honoured and all individuals are respected” (page 9).
64. PPM 119 requires all publicly-funded school boards to develop, implement, and monitor an equity and inclusive education policy (page 3). The policy must be comprehensive and cover the prohibited grounds of discrimination set out in the Ontario *Human Rights Code*, including sex, sexual orientation, gender identity, and gender expression (page 4). PPM 119 also states that when reviewing or developing their policy, boards are expected to consult widely, including with students, parents and guardians (page 4).
65. PPM 119 also directs school boards and schools to “use inclusive curriculum and assessment practices and effective instructional strategies that reflect the diverse needs of all students and the learning pathways that they are taking.” PPM 119 further directs school boards to use strategies to reduce achievement gaps, including “reviewing resources, instruction, and assessment and evaluation practices to identify and eliminate stereotypes, discriminatory biases, and systemic barriers” (page 6).
66. School boards in Ontario also have a wide range of equity and inclusive education policies, guidelines and plans that reflect the Ministry of Education’s Equity and Inclusive Education Strategy. The policies encompass areas such as: data collection methods, equitable financial and human resource allocation, employment practices, leadership and relationships in the school board communities, language and literacy, counselling supports, professional development, and human rights accommodations, among others. The policies also highlight principles of: fairness, non-discrimination, equity, anti-racism, anti-oppression, acceptance and inclusion.
67. Many school boards in Ontario have specific policies, guidelines and accommodation procedures related to gender identity and gender expression, such as use of pronouns and of washrooms and changing facilities that correspond to a person’s gender identity and gender expression.
68. PPM 144, entitled “Bullying Prevention and Intervention”, recognizes that a positive school climate, where all members of the school community feel safe, included, and accepted, is a crucial component of bullying prevention and identifies some characteristics of a positive school climate:
 - a. Students, school staff members, and parents feel safe, and are safe, included, and accepted.
 - b. All members of the school community demonstrate respect, fairness, and kindness in their interactions, building healthy relationships that are free from discrimination and harassment.
 - c. Students are encouraged and given support to be positive leaders and role models in their school community.

- d. Open and ongoing dialogue takes place between the principal, staff members, parents, and students. All partners are actively engaged.
 - e. The learning environment, instructional materials, and teaching and assessment strategies reflect the diversity of all learners, as well as their language of instruction (English; French as a first language; French as a second language).
 - f. Every student is inspired and given support to succeed in an environment of high expectations.
 - g. Bullying prevention and awareness-raising strategies for students and staff are reinforced through curriculum-linked programs. (page 2)
69. PPM 144 requires every board to establish a bullying prevention and intervention plan for the schools of the board. It also requires that boards must use the definition of bullying provided in the *Education Act* for the purposes of its policies on bullying prevention, which includes cyber-bullying, and explicitly states:

Principals must also suspend a student, and consider referring that student for expulsion, for any incident under subsection 306(1) of the *Education Act*, including bullying, that is motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, gender identity, gender expression, or any other similar factor (e.g., socio-economic status, appearance) (page 3).

70. PPM 144 also requires school boards, as part of the monitoring and evaluation of their policies, to conduct anonymous school climate surveys of students, staff, and parents at least once every two years. These surveys must include questions on bullying/harassment related to sexual orientation, gender identity, and gender expression, as well as questions on sexual harassment (page 8).

71. PPM 145, entitled “Progressive Discipline and Promoting Positive Student Behaviour”, addresses the importance of actively promoting and supporting appropriate and positive student behaviours, and that a whole-school approach should be taken to support positive school climates. PPM 145 confirms that the Ministry of Education is committed to supporting boards in building and sustaining a positive school climate that is safe, inclusive and accepting for all students. The PPM defines “school climate”:

The school climate may be defined as the learning environment and relationships found within a school and school community. A positive school climate exists when all members of the school community feel safe, included, and accepted, and actively promote positive behaviours and interactions. Principles of equity and inclusive education are embedded in the learning environment to support a positive school climate and a culture of mutual respect. A positive school climate is a crucial component of the prevention of inappropriate behaviour (page 2).

72. PPM 145 directs principals about their obligation to suspend when bullying is related to sexual orientation, gender identity, gender expression amongst other things:

Principals must also suspend a student, and consider referring that student for expulsion, for any incident under subsection 306(1) of the *Education Act*, including bullying, that is motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, gender identity, gender expression, or any other similar factor (e.g. socio-economic status, appearance) (page 5).

73. PPM 145 recognizes the important role of teachers, administrators and other school staff in building and sustaining a positive school environment. PPM 145 also recognizes that a positive school climate “also includes the participation of the school community, including parents [which is defined as including guardians], and the broader community, which can have a positive impact on the success of all students in the school.” (page 3)

74. PPM 145 further recognizes the role of student-led activities and organizations in building and sustaining a positive school climate and requires boards to support such student-led activities and organizations:

In accordance with subsection 303.1(1) of the *Education Act*, every board shall support students who want to establish and lead activities and organizations that promote a safe and inclusive learning environment, acceptance of and respect for others, and the creation of a positive school climate, including activities or organizations that promote gender equity; antiracism; the awareness and understanding of, and respect for, people with disabilities; or awareness and understanding of, and respect for, people of all sexual orientations and gender identities, including organizations with the name “gay-straight alliance” or another similar name (page 3).

75. PPM 145 outlines the requirements for school boards in providing supports for students affected by inappropriate behavior and for those who engage in these types of incidents:

School boards must provide supports for all students who are affected by serious student incidents and all inappropriate behaviour, and for those who engage in these types of incidents, to assist them in developing healthy relationships, making choices that support continuing their learning, and achieving success. Supports may be provided by employees of the board, through board programs and resource personnel, or through community-based service providers, including social service agencies and mental health services.

In responding to any incident, board employees who work directly with students must act in a timely, sensitive, and supportive manner. They are expected to support students – including those who disclose or report incidents and those who wish to discuss issues of healthy relationships, gender identity, and sexuality – by providing them with contact information about professional supports (e.g., public health units, community-based service providers, help phone lines) (page 10).

76. Ontario’s strategies, guidelines and PPMs related to equitable and inclusive education require school boards to provide safe, inclusive, and accepting learning environments for all students. School boards, in turn, are given flexibility to develop, review, and refine their policies to meet the requirements of Ontario’s strategy, guidelines, and PPMs, taking into account their local needs and circumstances.
77. PPM 128, entitled “The Provincial Code of Conduct and School Board Codes of Conduct”, sets clear provincial standards of behavior applying to students on school property, school buses, at school-related events or activities, or in other circumstances that could have an impact on the school climate. The standards also apply to all individuals involved in the publicly-funded school system, including principals, teachers, other school staff, parents, volunteers, and community groups. PPM 128 states that all members of the school community must “respect and treat others fairly, regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, or disability” (page 5).
78. These laws, policies and guidelines, together with the language of the 2018 curriculum itself directing teachers to “ensure that all students – students of all cultures, abilities, genders, and sexual orientations – feel included and recognized in all activities and discussions,”³¹ illustrate the Government of Ontario’s firm commitment to the safety, well-being and respectful and non-discriminatory treatment of all students, regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, or disability.

The Ontario health and physical education curriculum in comparative context

79. As noted above, education is a provincial responsibility in Canada. There is no authoritative educational standard across Canada that prescribes the particular content that should be included in a sexual health education curriculum, or the particular grade in which any particular content should be taught. While the 2008 Public Health Agency of Canada’s *Canadian Guidelines for Sexual Health Education* notes that effective sexual health education should be “age-appropriate” and “should be provided from the beginning of elementary school to the end of high school,” the Guidelines do not define age-appropriateness or set out a schedule of grades in which particular topics should be taught.³² The Sex Information and Education Council of Canada (SIECCAN) has undertaken a review of the *Canadian Guidelines for Sexual Health Education* and will be releasing new guidelines in 2019. Similarly, the World Health Organization recommendations on adolescent sexual and reproductive health and rights,³³ cited in the Joint Communication (at p. 3), recommend that comprehensive sexuality education

³¹ Ontario Curriculum, Grades 1-8: Health and Physical Education, Interim Edition (re-issued 2018) at p. 47.

³² Canada. *Canadian Guidelines for Sexual Health Education* (2008): <http://www.phac-aspc.gc.ca/publicat/cgshe-ldnemss/pdf/guidelines-eng.pdf> at p. 21.

³³ <https://apps.who.int/iris/bitstream/handle/10665/275374/9789241514606-eng.pdf?ua=1>

programs “should be age-appropriate, based on scientific evidence, and comprehensive and inclusive in its content”³⁴ but do not prescribe that particular topics should or must be taught in particular grades.

80. Each provincial and territorial government in Canada makes its own determinations on these issues, and these determinations change over time. There is considerable diversity in terms of what sexual health topics are addressed, the level of detail at which they are addressed, and the grade in which they are addressed across Canadian provinces and territories today.
81. The introduction of sexual health topics in Ontario’s 2018 curriculum are well within the mainstream of Canadian provinces and territories. Ontario’s 2018 Health and Physical Education curriculum is also well within the mainstream as compared to the curriculums of other free and democratic societies, such as the United Kingdom (where there is no mandatory sexual education in English local authority-maintained schools for children younger than 11),³⁵ New Zealand,³⁶ and Australia.³⁷

The recent province-wide consultations on future developments in education in Ontario

82. The Joint Communication expresses “deep concern that the declarations from the Minister of Education and the Premier of Ontario seem consistent with a worrying global trend of attempts to reinforce gender stereotypes and roll back progress that has been made in achieving gender equality.”³⁸ No such declarations from the Minister or the Premier are cited or quoted in the Joint Communication, and indeed no such declarations exist. To the contrary, on July 16, 2018, the Minister of Education stated in the Legislative Assembly of Ontario:

[W]e are going to stand firmly in support of students and the realities they face in 2018. We know they need to learn about consent. We know they need to learn about cyber safety. We know they need to learn about gender identity and appreciation³⁹

83. Also on July 16, 2018, the Minister of Education announced a public consultation of all Ontarians on the province’s education system, including consultation on the Health and Physical Education curriculum.
84. On July 25, 2018, the Deputy Premier of Ontario spoke about the planned consultation in the Legislative Assembly of Ontario

³⁴ *Ibid.* at pp. 5-6.

³⁵ UK Parliament, corp creators. (2018) House of Commons Library: Briefing paper: Number 06103, 23 August 2018: *Relationships and Sex Education in School (England)*, available at <http://researchbriefings.files.parliament.uk/documents/SN06103/SN06103.pdf>

³⁶ <http://nzcurriculum.tki.org.nz/The-New-Zealand-Curriculum/Health-and-physical-education>

³⁷ <https://www.australiancurriculum.edu.au/f-10-curriculum/health-and-physical-education/structure/>

³⁸ Joint Communication OL CAN 4/2018 at p. 5.

³⁹ Ontario, Legislative Assembly, *Official Reports of Debate (Hansard)*, 42nd Parl., 1st Sess., No. 3 (16 July 2018) at pp. 16-17.

As we have indicated all along, what we want to do is listen to parents, such as the parents that you're speaking about, to make sure we hear from everyone so that we have a proper end-to-end consultation that is completely inclusive and that hears from everyone...We want it to be a thorough consultation that takes into account the views of everyone in Ontario.

85. These and other public statements by the Minister and the Government of Ontario clarify that the purpose in reissuing the 2010 curriculum for use in the 2018-2019 school year was to seek to address concerns about the sufficiency of the public and parental consultations that took place prior to the issuance of the previous health and physical education curriculum in 2015, and to ensure that everyone in Ontario is invited to have their say about the next health and physical education curriculum.
86. The 2015 Health and Physical Education curriculum gave rise to expressions of community and parental concern and disapproval. These concerns were expressed through petitions in the Legislative Assembly, letters to the Minister, public protests, and withdrawals of students from school. Many Ontarians expressed concerns that there was insufficient parental consultation before the 2015 curriculum was issued. Without adequate parental and community acceptance and input into the curriculum, students may be withdrawn from publicly-funded schools, and will thereby lose the important educational and social benefits that come from public education.
87. The community concerns expressed about the 2015 curriculum included: concerns about the age-appropriateness of certain learning expectations in certain grades; concerns that parents had not adequately been consulted; concerns that the curriculum interfered with religious beliefs; and concerns that the curriculum undermined the primary role of parents in educating their children in sensitive matters such as sexual health.
88. Article 26 of the *Universal Declaration of Human Rights* declares that "Parents have a prior right to choose the kind of education that shall be given to their children."⁴⁰ Similarly, Article 18 of the *International Covenant on Civil and Political Rights* provides that "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."⁴¹ The Government of Ontario's efforts at renewed parental consultation on the curriculum are consistent with and give effect to these important rights, while also respecting the important rights cited in the Special Procedures' Joint Communication.
89. The Minister of Education has concluded that more parental and community consultation should have been undertaken before the 2015 curriculum was issued, and that, in the interim pending widespread provincial consultation on a new curriculum, the previous

⁴⁰ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Art. 26(3).

⁴¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Art. 26.

curriculum that had already been accepted by the community and used without public protest or complaint from September 2010 to June 2015 should continue to be used.

90. The consultation was not restricted to sexual education topics, but will also help shape decisions on a variety of education topics, including improving student performance in science, technology, engineering and math, and managing the use of technology such as cell phones in classrooms. Ontarians could participate in the consultation process through a number of different means, including an online submission system, an online survey, and telephone Town Halls held in regions across the province.
91. More than 72,000 individuals participated in the consultation, making it the largest and most widespread consultation on education in Ontario's history. The data from this consultation is was analyzed to help to inform decisions about the new Health and Physical Education curriculum.
92. On March 15, 2019, Ontario announced its plan to issue a revised Health and Physical Education curriculum that will be released in May 2019 and implemented in September 2019. The new curriculum will be age-appropriate and relevant to today's students, consistent with the feedback that the government received from the consultation.
93. Some of the learning expectations that will be included in the 2019 Health and Physical Education curriculum include learning the proper names for body parts (including genitalia); caring behaviours, including bullying prevention; online safety; consent; family and healthy relationships; sexual orientation; gender identity and gender expression; substance use, addictions and related behavior; abstinence, intercourse, contraception and sexually transmitted infections. Many of these topics are being taught at an earlier age than any prior Health and Physical Education curriculum in Ontario, and some topics are being introduced into the curriculum for the very first time.