

Court File No.: 526/18

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

BETWEEN:

BECKY MCFARLANE, in her personal capacity and as litigation guardian for L.M.,
and
THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicants

- and -

MINISTER OF EDUCATION (ONTARIO)

Respondent

Court File No. 554/18

AND BETWEEN:

THE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO and CINDY
GANGARAM

Applicants

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTER OF EDUCATION

Respondent

**AFFIDAVIT OF MARTYN BECKETT
(AFFIRMED NOVEMBER 5, 2018)**

I, Martyn Beckett, of the City of Toronto, in the Province of Ontario, **AFFIRM AND SAY
AS FOLLOWS:**

1. I am the Assistant Deputy Minister ("ADM") of the Student Achievement Division of the Ministry of Education (the "Ministry"). As such, and because of my background set out below, I have knowledge of the matters to which I hereinafter depose. Where my knowledge is not personal, I have specified the source and believe it to be true.

A. My position and professional background

2. One of the responsibilities of the Student Achievement Division is the development of the curriculum guidelines and the process for issuing those guidelines to publicly-funded elementary and secondary schools in Ontario. The Student Achievement Division includes the following branches: (1) Curriculum Assessment and Student Success Policy Branch; (2) the Leadership, Collaboration and Governance Branch; (3) the Professionalism, Teaching Policy and Standards Branch; (4) the Program Implementation Branch; and (5) the Student Achievement Supports Branch.

3. My responsibilities as ADM include the development and implementation of policies and programs that support high expectations and success for all learners, with a focus on increased achievement, well-being, and equity of outcomes. This work is supported in part through:

- a) teaching standards and professional supports intended to promote innovative and responsive teaching and learning practices;
- b) partnerships with educators to inform improvement planning and capacity building; and
- c) the use of data to, among other things, monitor and support students who may be under-represented according to success indicators, such as the successful transition to post-secondary education and apprenticeship pathways.

4. Specifically, my responsibilities as ADM include the development and implementation of curriculum and assessment policies.
5. I report to the Deputy Minister, Nancy Naylor, who in turn supports the Minister of Education, the Honourable Lisa Thompson (the "Minister").
6. My Curriculum Vitae is attached hereto as **Exhibit "1"**.
7. Prior to holding my current position, I was the ADM for the Ministry's Student Support and Field Services Division from May 2017 to March 2018. From March 2016 to May 2017, I was the ADM for the Learning and Curriculum Division, which at the time was responsible for the development of curriculum and assessment policy for the Ministry.
8. Prior to joining the Ministry of Education, I was the Director of Education for the Durham District School Board for approximately 8 years from February 2008 to March 2016. In this role, I served the Board of Trustees as the Chief Executive Officer and Chief Education Officer. The Board was responsible for the day-to-day delivery of education to students in over 130 publicly-funded schools throughout our district. My responsibilities included the operationalization of the elementary and secondary Ontario curriculum by approximately 5,000 teaching staff. I was also the Supervisory Officer at the Durham District School Board for the Ajax Family of Schools and School Community Councils from 2003 to 2005 and for Special Education from 2005 until 2008.
9. From 2001 to 2003, I was the Principal of Pine Ridge Secondary School. In this role, I gained experience in leadership in a large secondary school focused on student achievement in a diverse population. My responsibilities included school leadership

planning to improve student achievement (with particular focus on literacy results); monitoring school and system reporting data to align instruction with student needs; and the establishment of parent and student advisory committees on school safety and security. As Principal, I ensured that the Ontario curriculum was being properly implemented within my school.

10. Between 1990 and 2001, I held various positions including Vice-Principal, Head of Science, Assistant Head of Science, and teacher. As Head of Science, I provided support to teachers in their delivery of the curriculum on a day-to-day basis, in addition to duties such as scheduling classes and teacher class assignments. As a teacher myself, I delivered the Ontario curriculum for science, mathematics, and environmental science and taught co-operative education to my students. I delivered the curriculum by, for example, planning units of study, developing a variety of teaching approaches in my lesson plans, selecting appropriate resources to address the learning expectations, and taking into account the needs and abilities of my students.

B. The Government's education priorities

11. The Government has publicly committed to making changes to Ontario's education system. The purpose of the changes is to help students acquire the skills they need to be safe and healthy and to succeed in the changing economy. They are also designed to ensure that parents have meaningful input into what their children are learning.

12. The Government has identified a number of key priorities. Attached hereto as **Exhibit "2"** is a memo dated July 11, 2018 from the Minister to trustees, chairs and directors of education, teacher federations, principal and vice-principal groups, parent

organizations, and child care stakeholder groups, identifying the key priorities as including:

- a) **Child care** – Providing parents a 75% refundable tax credit for child care costs;
- b) **Math Fundamentals** – Restoring proven methods of teaching designed to ensure student success, and making math a mandatory subject in teachers' college programs;
- c) **Health** – Restoring the previous sex education (or “sex ed”) component of the curriculum until the Government has an opportunity to conduct extensive consultation with parents and develop a new sex ed component that it believes to be age-appropriate;
- d) **School closures** – Maintaining the current moratorium on school closures until the Government completes a full review of the school closure process;
- e) **Standardized testing** – Reviewing the current process established by the Education Quality and Accountability Office (“EQAO”); and
- f) **Autism funding** – Investing an additional \$38 million to support children with autism.

13. On July 12, 2018, the Lieutenant Governor of Ontario, the Honourable Elizabeth Dowdeswell, delivered the Government’s Speech from the Throne, *A Government for the People*, which is attached hereto as **Exhibit “3”**. Government commitments in the Speech from the Throne included respecting parents, teachers, and students by reviewing the mathematics curriculum to allow children to succeed and by reviewing the health and physical education (or “HPE”) curriculum to ensure an age-appropriate curriculum based on meaningful consultations with parents.

14. On August 22, 2018, the Minister issued the interim curriculum for elementary health and physical education (the “2018 Interim HPE Curriculum”), attached hereto as **Exhibit “4”**, to be used by teachers during the course of the 2018-2019 school year, with an updated Teacher’s Guide and Parent Fact Sheet on fundamentals in math

released on August 28, 2018. The 2018 Interim HPE Curriculum replaced the previous HPE curriculum taught between September 2015 and June 2018 (the “2015 HPE Curriculum”).

15. The Government also announced that it would engage in a broad and robust province-wide consultation to help inform changes to mathematics, the HPE curriculum and other policies such as distraction-free learning environments. Attached hereto as **Exhibit “5”** is the Backgrounder on Consultation into Education Reform.

16. The consultations, which are currently ongoing, are described in further detail below at paragraphs 93 to 111.

C. The elementary school curriculum in Ontario

i. Who develops and implements the curriculum

17. Section 8(1) of the *Education Act*, R.S.O. 1990, c. E.2 provides that the Minister 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.

18. 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.

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

20. 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 s. 264(1)(a) of the *Education Act* to “teach diligently and faithfully the classes or subjects assigned to the teacher by the principal”.

ii. The structure of the curriculum

21. The Ontario curriculum is comprised of curriculum documents for each subject (e.g. mathematics, health and physical education). There are eight elementary curriculum documents in Ontario, which are attached hereto as **Exhibits “4” and “6” to “12”**. Attached hereto as **Exhibit “13”** is the Kindergarten Program.

22. Each curriculum document is itself comprised of “front matter”, learning expectations, and teacher supports that include examples, sample teacher prompts, and sample student-teacher interactions. Attached hereto as **Exhibit “14”** is a page from the Ministry of Education’s website describing the Ontario elementary school curriculum.

23. 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.

24. Learning 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. Learning expectations are mandatory, and courses of study and classroom programs in each grade must be developed from these learning expectations. The curriculum documents use the terms “expectations”, “curriculum expectations” and “learning expectations”; in this affidavit, they will be referred to throughout as “learning expectations”.

25. 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.

26. 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. As stated in the 2018 Interim HPE Curriculum, for example:

As they mature and develop their ability to persist, to manage their behaviour and impulses, to take responsible risks, and to listen with understanding, students become better able to take more responsibility for their learning and

progress. Learning to take responsibility for their improvement and achievement is an important part of every student's education. (page 9)

27. As a further example, the overview section for each division of the 2018 Interim HPE Curriculum illustrates the progressive and scaffolded learning to be achieved in Healthy Living Strand 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)

28. In addition to the learning 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.

29. 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.

30. 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.

31. 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.

32. 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. However teachers choose to implement the classroom program, they are directed to do so in an inclusive way. As expressly stated in the 2018 Interim HPE Curriculum:

The examples and prompts help to clarify the requirements specified in the expectations and suggest the intended depth and level of complexity of the

expectations. They have been developed to model appropriate practice for the grade and are meant to serve as illustrations for teachers. Teachers can choose to use the examples and teacher prompts that are appropriate for their students, or they may develop their own approaches that reflect a similar level of complexity. 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)

33. 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.

34. A good example of the nature of the learning expectations in the Ontario curriculum and how they are implemented by teachers is provided by the elementary Mathematics Curriculum (2005), which is attached hereto as **Exhibit “9”**. The following chart provides some of the scaffolded learning expectations in Grades 1 to 4 and demonstrates their deepening level of complexity as students move through the grades:

By the end of Grade 1, students will:	solve problems involving the addition and subtraction of single-digit whole numbers , using a variety of strategies.
By the end of Grade 2, students will:	solve problems involving the addition and subtraction of one- and two-digit whole numbers , using a variety of strategies, and investigate multiplication and division.
By the end of Grade 3, students will:	solve problems involving the addition and subtraction of single- and multi-digit whole numbers , using a variety of strategies, and demonstrate an understanding of multiplication and division .

By the end of Grade 4, students will:	solve problems involving the addition, subtraction, multiplication, and division of single- and multi-digit whole numbers , and involving the addition and subtraction of decimal numbers to tenths and money amounts , using a variety of strategies.
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35. These learning expectations describe the knowledge and skills that students are expected to learn in each grade; for example, by the end of Grade 1 students are expected to “solve problems involving the addition and subtraction of single-digit whole numbers, using a variety of strategies.” The curriculum does not mandate any particular script that teachers must follow in teaching students how to add and subtract single-digit whole numbers. It does not prescribe, for example, a mandatory list of particular math problems that students must be asked to solve (e.g. “ $4 + 4 = X$ ”). Nor does it prohibit teachers from using any particular words or phrases to teach the concept of adding and subtracting single-digit whole numbers. The question of how best to teach these learning expectations is largely left to the professional discretion of teachers.

36. There are as many different ways of teaching students how to add and subtract single-digit whole numbers as there are creative teachers: one teacher might use beads or flashcards, while another might put students in groups and have them count together using their fingers. Like the HPE curriculum, the Math curriculum, excerpted below, expressly states that teachers may choose from among many different ways of achieving the learning expectation:

Many of the expectations are accompanied by examples and/or sample problems, given in parentheses. These examples and sample problems are meant to illustrate the specific area of learning, the kind of skill, the depth of learning, and/or the level of complexity that the expectation entails. The examples are intended as a guide for teachers rather than as

an exhaustive or mandatory list. Teachers do not have to address the full list of examples; rather, they may select one or two examples from the list and focus also on closely related areas of their own choosing. Similarly, teachers are not required to use the sample problems supplied. They may incorporate the sample problems into their lessons, or they may use other problems that are relevant to the expectation. Teachers will notice that some of the sample problems not only address the requirements of the expectation at hand but also incorporate knowledge or skills described in expectations in other strands of the same grade.

See page 7 of Math Curriculum (**Exhibit “9”**);

See also page 16 of the 2018 Interim HPE Curriculum (**Exhibit “4”**)

37. While the method of teaching is substantially up to the teachers, the learning expectations themselves are mandatory. A Grade 1 teacher who did not develop a classroom program in which students were taught and assessed on their ability to “solve problems involving the addition and subtraction of single-digit whole numbers, using a variety of strategies” would not be adhering to the curriculum. It is mandatory that Grade 1 classroom math programs include instruction in adding and subtracting single-digit whole numbers.

38. Similarly, a teacher who developed a Grade 1 classroom program in which students were expected to demonstrate and were assessed on their ability to “solve problems involving the addition, subtraction, multiplication, and division of single- and multi-digit whole numbers” would not be adhering to the curriculum, either. The curriculum places this learning expectation in Grade 4, not in Grade 1, and teachers should not design classroom programs in which Grade 1 students are expected to learn and demonstrate Grade 4 learning expectations.

39. However, this does not mean that teachers are prohibited from referring to content in the learning expectations for higher (or lower) grades in the course of teaching Grade

1. Some Grade 1 students, for example, may quickly grasp the mandatory learning expectations (e.g. add and subtract single-digit whole numbers), and may ask the teacher questions that involve matters taught in a higher grade ("If nine plus one is ten, what is ten plus one?"). The curriculum does not prevent teachers from answering such questions from Grade 1 students, even though the answer relates to a learning expectation taught in a higher grade (in this example, adding one- and two-digit whole numbers, which is a Grade 2 learning expectation). If some Grade 1 students wanted to know how to add two-digit numbers, or how to add fractions instead of whole numbers, the curriculum would not prohibit the Grade 1 teacher from explaining these concepts in an age-appropriate way, consistent with the teacher's exercise of professional judgement.

40. What the curriculum *would* prohibit, however, is the design or implementation of a classroom program for Grade 1 in which students were taught and assessed on the Grade 2 (or higher) learning expectations. Under the provincial curriculum, teachers are not free to design classroom programs for Grade 1 students where they are expected to learn and be assessed on the Grade 2 (or higher) learning expectations. The learning expectations are scaffolded in terms of their age-appropriateness and level of complexity, and while some Grade 1 students might be ready to learn Grade 2 learning expectations, others might not be.

41. Another example of the nature of the learning expectations and how they are implemented by teachers is provided by the Music strand of the elementary Arts Curriculum (2009), which is attached hereto as **Exhibit "6"**. The following chart sets out

some of the learning expectations in Grades 1 to 3 and demonstrates their deepening level of complexity as students move through the grades:

By the end of Grade 1, students will:	C1.1 sing songs in unison and play simple accompaniments for music from a wide variety of diverse cultures, styles, and historical periods
By the end of Grade 2, students will:	C1.1 sing unison songs in tune and/or play simple melodies and accompaniments for music from a wide variety of cultures, styles, and historical periods
By the end of Grade 3, students will:	C1.1 sing, in tune, unison songs, partner songs, and rounds , and/or play accompaniments from a wide variety of cultures, styles, and historical period

42. The Music strand of The Arts curriculum does not mandate any particular script that teachers must follow in teaching students how to sing in unison. It does not prescribe, for example, a mandatory list of particular songs that students must be asked to sing. Nor does it prohibit teachers from using any particular songs to teach the concept of singing in unison. For example, the curriculum does not prescribe that teachers must use a particular nursery rhyme, pop song, etc. The question of how best to teach these learning expectations is largely left to the professional judgment of teachers.

43. Some Grade 1 students may quickly grasp the mandatory learning expectations (e.g. singing in unison), and may ask the teacher if they could sing more complicated songs (e.g. singing a tune from musical notation in unison). The curriculum does not prevent teachers from providing such opportunities to Grade 1 students, even though the question relates to a learning expectation taught in a higher grade (sing and/or play, in tune, from musical notation, unison, and two-part music with accompaniments, which is a Grade 5 expectation). If some Grade 1 students wanted this experience, the

curriculum would not prohibit the Grade 1 teacher from explaining these concepts in an age-appropriate way, consistent with the teacher's exercise of professional judgment. The teacher, however, could not design or implement a classroom program for Grade 1 in which students were taught, assessed and evaluated on the learning expectations from higher grades.

44. The same logic applies to the learning expectations in the HPE curriculum. The following chart of examples from the 2018 Interim HPE Curriculum sets out some of the learning expectations from Grades 1 to 8 and shows how they are "scaffolded", i.e., how they become increasingly complex as students move through the grades

By the end of Grade 1, students will:	<ul style="list-style-type: none"> • identify the stages in development of humans (e.g., comparing physical changes from birth to childhood) and of other living things. • identify the major parts of the body by their proper names.
By the end of Grade 2, students will:	<ul style="list-style-type: none"> • describe parts of the human body, the functions of these parts, and behaviours that contribute to good health. • distinguish the similarities and differences between themselves and others (e.g., in terms of body size or gender).
By the end of Grade 3, students will:	<ul style="list-style-type: none"> • outline characteristics in the development and growth of humans from birth to childhood. • describe basic changes in growth and development from birth to childhood (e.g., changes to teeth, hair, feet, and height).
By the end of Grade 4, students will:	<ul style="list-style-type: none"> • identify the physical, interpersonal, and emotional aspects of healthy human beings. • describe the four stages of human development (infancy, childhood, adolescence, and adulthood) and identify the physical, interpersonal, and emotional changes appropriate to their current stage.
By the end of Grade 5, students will:	<ul style="list-style-type: none"> • describe physical, emotional, and interpersonal changes associated with

	puberty. <ul style="list-style-type: none"> • describe the secondary physical changes at puberty (e.g., growth of body hair, changes in body shape). • describe the processes of menstruation and spermatogenesis.
By the end of Grade 6, students will:	<ul style="list-style-type: none"> • identify the major parts of the reproductive system and their functions and relate them to puberty. • relate the changes at puberty to the reproductive organs and their functions.
By the end of Grade 7, students will:	<ul style="list-style-type: none"> • 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). • explain the male and female reproductive systems as they relate to fertilization.
By the end of Grade 8, students will:	<ul style="list-style-type: none"> • identify the physical, emotional, interpersonal, and spiritual aspects of healthy sexuality (e.g., respect for life, ethical questions in relationships, contraception).

45. The HPE learning 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 HPE 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 Interim HPE 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).

46. As with other subjects, teachers are free to answer questions or to discuss matters in the HPE curriculum that relate to topics taught in higher grades. To some extent, this may be inevitable, as some of the HPE learning expectations overlap across grades: for example, when Grade 5 students learn to “describe the processes of menstruation and spermatogenesis”, they may well discuss “the major parts of the reproductive system and their functions” (which is part of a Grade 6 learning expectation). Nothing in the curriculum prohibits this result.

47. What the HPE curriculum would not permit – just as in the Math example set out above at paragraphs 34 to 40 – 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 HPE programs for Grade 5 students where they are expected to learn and be evaluated and assessed on the Grade 6 (or higher) expectations. Although teachers are permitted to make reference to Grade 6 (or higher) expectations and content in teaching the Grade 5 program, they must nonetheless teach and assess students on the Grade 5 expectations. Whether in Math, HPE 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.

48. Teachers are also required to ensure that the curriculum is implemented in an inclusive way that is respectful of diversity. The 2018 Interim HPE Curriculum provides:

Teachers can choose to use the examples and teacher prompts that are appropriate for their students, or they may develop their own approaches that reflect a similar level of complexity. 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)

49. This requirement to teach in an inclusive way is also found in a number of laws and policies governing school boards and teachers, as detailed below at paragraphs 150 to 170.

50. Teachers are therefore required to teach all of the 2018 Interim HPE Curriculum learning expectations in a way that is inclusive and that reflects the diversity of the student population, including LGBTQ2S+ diversity. For example, in Grade 7, students are expected to “identify sources of support with regard to issues related to healthy sexuality (*e.g., parents/guardians, doctors*)”. There may be sources of support that are different or more focused for LGBTQ2S+ students than for non- LGBTQ2S+ students. The fact that the learning expectation does not expressly state “[...] including sources of support for LGBTQ2S+ students” does not mean that teachers cannot or should not identify such sources. To the contrary, teachers may identify such sources in order to ensure that this learning expectation is taught in an inclusive way.

51. As another example, all Grade 5 students are expected to “describe physical, emotional, and interpersonal changes associated with puberty”. Teachers may decide, in the exercise of their professional judgment to include learning related to sexual orientation and gender identity, to ensure that the implementation of the Grade 5 learning expectation is inclusive and reflect the diversity of the student population and the diversity of the province.

52. As a further example, all Grade 2 students are expected to learn to “distinguish the similarities and differences between themselves and others”. This learning expectation provides two non-mandatory examples of similarities and differences (*e.g., in terms of body size or gender*), but does not purport to limit or exhaust all of the “similarities and differences between themselves and others” that students could be taught to distinguish. The term “gender”, which is provided as an example, is defined in the Glossary of the 2018 Interim HPE Curriculum as “A term that refers to those characteristics of women and men that are socially constructed. See also gender identity and sex” (page 212). Other examples of similarities and differences could include similarities and differences in terms of sex, sexual orientation, gender identity, and gender expression. Nothing in the learning expectation prohibits teachers from addressing these and other similarities or differences. Teachers, however, would be required to exercise their professional judgment in determining how to discuss these similarities and differences in a manner that is age-appropriate and that reflects the individual needs and abilities of the students in the classroom.

53. While teachers are free to address topics that may arise in later grades, they are not free to design classroom programs for a particular grade that do not teach and evaluate the learning expectations specified for that grade. Similarly, teachers are not free to design classroom programs that teach and evaluate students based on the learning expectations from a different grade. For example, the Grade 1 learning expectations include that students will “identify the major parts of the body by their proper names”. Nothing in this learning expectation prohibits teachers from teaching Grade 1 students the proper names for genitalia (including penis and vagina). Teachers,

however, would not be permitted to design a classroom program for Grade 1 students that is based on teaching and evaluating the Grade 7 learning expectations, i.e., “explain the male and female reproductive systems as they relate to fertilization”.

54. The curriculum is also designed and written so that teachers may use local, relevant and/or current issues and topics in achieving the learning expectations, thus enabling the curriculum to remain relevant and used for many years. In general, curriculum documents are not intended to be updated every year. Rather, they are generally intended to provide a durable framework that can be implemented in a contemporary way in each year.

55. For example, under the Personal Safety and Injury Prevention component of the 2018 Interim HPE Curriculum, the specific expectations for Grade 4 students include that students will learn to “describe various types of bullying and abuse (e.g. *social, physical, verbal*), including bullying using technology (e.g., *via e-mail, text messaging, chat rooms, websites*), and identify appropriate ways of responding” (page 128). While the non-mandatory examples refer to some forms of technology (such as e-mail and text messaging), the mandatory expectation is crafted at a higher level of generality that is intended to be able to capture the wide-ranging and changing nature of communications technology. If the curriculum required teachers to use particular examples of specified technology platforms (e.g. Facebook, Snapchat), or current slang (e.g. sexting, cyberbullying), the curriculum may fail to keep pace with evolving technology and terminology and become quickly out of date.

56. The curriculum is also designed and written to equip students with a set of transferable skills and approaches that can be adapted across a wide range of

situations and interactions, rather than to train students to memorize standardized responses to prescribed questions. As stated in the 2018 Interim HPE Curriculum:

With teacher support and encouragement, students learn that they can apply the skills they acquire in one subject to various other contexts and subjects. For example, they can apply the problem-solving skills they use in mathematics as they learn new skills in health and physical education, and they can apply various other critical and creative thinking processes that they develop in health and physical education to their study of dance, or to question historical interpretations, or to make connections between personal actions and environmental impacts. They can also apply the knowledge and skills they acquire in health and physical education to make better choices in all aspects of their lives. They can apply the understanding of movement that they acquire in health and physical education to other physical activities that they participate in at school, at home, and in the community, and they can apply their learning about healthy living to make healthier food choices, help with meal preparation, and make decisions about substance use, sexual health, and injury prevention. (page 9)

57. An example of this approach of teaching transferable skills rather than standardized responses is found in the Grade 7 learning expectations in the 2018 Interim HPE Curriculum, which requires students to learn to “use effective communication skills (*e.g. refusal skills, active listening*) to deal with various relationships and situations” (page 184). Effective communication skills to deal with various relationships and situations is a set of transferable skills that can be adapted depending on the circumstances faced by each student. As stated in the 2018 Interim HPE Curriculum:

Students are encouraged to make connections between concepts in different content areas. If, for example, students learn refusal strategies when choosing not to smoke, they can learn to apply those same strategies when making choices about taking care of their bodies or choices connected to substance use, sexual health, physical activities, and personal safety. (page 30)

58. The Grade 7 learning expectation regarding effective communication skills is also a good illustration of how teachers can and must teach the learning expectations in an inclusive way. All students, including all LGBTQ2S+ students, can benefit from learning effective communication skills to deal with various relationships and situations, even though each student's own relationships and situations may differ from those of their peers.

iii. The Health and Physical Education curriculum

59. The HPE 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.

60. The fundamental principles of the HPE curriculum are as follows:

1. Health and physical education programs are most effective when they are delivered in healthy schools and when students' learning is supported by school staff, families, and communities: When students see the concepts they are learning in health and physical education reflected and reinforced through healthy-school policies and healthy practices in their families and communities, their learning is validated and reinforced. Students are then more likely to adopt healthy active living practices and maintain them throughout their lives.
2. Physical activity is the key vehicle for student learning: Health and physical education offers students a unique opportunity for kinesthetic learning – they learn about healthy, active living primarily by “doing”, that is, through physical activity. In health and physical education, students discover the joy of movement, learn about their bodies, and develop physical and cognitive skills that will contribute to their lifelong health and well-being.
3. Physical and emotional safety is a precondition for effective learning in health and physical education: Students learn best in an environment that is physically and emotionally safe. In health and physical education, students are learning new skills and participating in a physical environment where there is inherent risk. They are learning in a public space where others can see them explore, learn, succeed, and make mistakes. They discuss health

topics that have implications for their personal health and well-being. It is critical that teachers provide a physically and emotionally safe environment for learning by emphasizing the importance of safety in physical activity, treating students with respect at all times, being sensitive to individual differences, following all board safety guidelines, and providing an inclusive learning environment that accommodates individual strengths, needs, and interests.

4. Learning in health and physical education is student-centred and skill based: Learning in health and physical education should be directly connected to the needs and abilities of individual students. 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. The learning in all strands is focused on individual skill development for healthy, active living, supported by knowledge of content and conceptual understanding. In order to reach their full potential, students need to receive progressive instruction and constructive feedback, as well as numerous opportunities to practise, reflect, and learn experientially in a safe environment.
5. Learning in health and physical education is balanced, integrated, and connected to real life: Health and physical education is balanced in that it addresses both the physical and cognitive needs of students. It also addresses their psychological and social needs. It is important for teachers to provide adequate time and resources for all aspects of the program, and not to allow any one aspect to be emphasized at the expense of others. Learning in health and physical education is integrated because the connections between the various elements of the program – active living, movement competence, healthy living, and living skills – are always recognized. Understanding these connections provides the foundation for health and physical literacy and for lifelong healthy, active living. Finally, health and physical education is highly relevant to students' present and future lives in a rapidly changing world, and students need to understand this if they are to develop the comprehension, commitment, and capacity to participate in and promote healthy, active living.

See 2018 Interim HPE Curriculum, pages 6-7 (**Exhibit “4”**);

See also 2015 HPE Curriculum, pages 6-7 (**Exhibit “18”**)

61. The learning expectations in the HPE 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 HPE 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 HPE strands. As noted in the 2018 Interim HPE 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 students learn to apply them in a variety of contexts that relate to their everyday lives. (page 18)

62. The Healthy Living 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).

63. 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. The learning in all of these components is intended to be integrated, not taught in isolation. The HPE curriculum does not prescribe the order in which the learning expectations are to be taught or how they may

be combined with other learning expectations. Teachers make this determination as part of the process of planning their classroom program.

64. The “Growth and Development” component of the 2018 Interim HPE Curriculum includes topics related to sexual health. The 2018 Interim HPE 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).

65. The Growth and Development component is only one part of the entire HPE curriculum. There are 345 learning expectations in the 2018 Interim HPE Curriculum, of which only 41 are in the Growth and Development component. The learning expectations in the Growth and Development component therefore represent about 11 percent of all of the learning expectations in the 2018 Interim HPE Curriculum. By comparison, in the 2015 HPE Curriculum, there were 26 learning expectations in the “Human Development and Sexual Health” component, out of a total of 330 learning expectations (less than 8 percent of the 2015 HPE Curriculum).

66. Curriculum expectations are not intended to be taught in isolation from one another. Students are taught the HPE curriculum, along with the entire Ontario curriculum, in an integrated way, not as a collection of discrete parts. In particular, as discussed further below at paragraphs 115 to 119 and 140 to 143, the values of equity

and inclusion are found throughout various parts of the HPE curriculum, and the curriculum documents of other subjects.

D. History of the HPE curriculum

67. In 1998, the first standardized comprehensive HPE curriculum document was issued (the "1998 HPE Curriculum"). It is attached hereto as **Exhibit "15"**. It included a Growth and Development component covering sexual health.

68. In February 2010, a revised HPE curriculum for elementary students was issued (the "2010 Revised HPE Curriculum"). It is attached hereto as **Exhibit "16"**. It included a component entitled "Human Development and Sexual Health". It was scheduled to be implemented as of September 2010.

69. Following the release of the 2010 Revised HPE Curriculum, the Ministry became aware of parent concerns reported in the media about this curriculum. In June 2010, an interim HPE curriculum was issued to replace the 2010 Revised HPE Curriculum (the "2010 Interim HPE Curriculum"). It is attached hereto as **Exhibit "17"**. It replaced the "Human Development and Sexual Health" component with the "Growth and Development" component from the 1998 HPE Curriculum. This curriculum was used from September 2010 to June 2015.

70. In February 2015, a revised HPE curriculum was issued that would form the basis of elementary classroom programs effective September 2015. This is the 2015 HPE Curriculum. It is attached hereto as **Exhibit "18"**. This curriculum contained updates to all components including "Growth and Development", which was renamed "Human Development and Sexual Health".

71. On August 22, 2018, the 2018 Interim HPE Curriculum, which is **Exhibit “4”**, was issued to replace the 2015 HPE Curriculum. The contents of the 2018 Interim HPE Curriculum are substantially identical to those that were in place from September 2010 to June 2015. The Growth and Development learning expectations in the 2018 Interim HPE Curriculum are the same as those in the 1998 HPE Curriculum.

E. Parent consultation and response to the 2015 HPE Curriculum

72. I am aware of concerns raised regarding the sufficiency of parent consultation leading up to the release of the 2015 HPE Curriculum.

73. Between January and March 2008, the Ministry held 13 general consultation meetings in certain locales in Ontario. The consultation meetings included one meeting on February 4, 2008 with a representative from each of: the Ontario Association of Parents in Catholic Education (OAPCE) and the Ontario Federation of Home and School Associations (OFHSA). The Ministry also received written submissions from OAPCE and one other parent group, People for Education.

74. In the Fall of 2014, principals from each elementary school were asked to select one parent from each school council to complete an online survey about the proposed HPE curriculum. Parent Involvement Committees in each school board were also asked to select one member to complete to the survey. The survey was to be completed within between November 18 and November 24, 2014. The only parents who were given an opportunity to complete the survey were parents who were chosen either by the principal or by the Parent Involvement Committee.

75. Of the approximately 4,000 parents who were given an opportunity to complete the survey, only 1,638 parents actually completed it.

76. There are approximately 1.4 million students enrolled in elementary schools in Ontario.

77. On November 19, 2014, the Ministry invited four parent groups – OAPCE, People for Education, OFHSA, and Parents Partenaires en Éducation – to take part in a face-to-face meeting and asked questions about topics addressed in the survey. No other parent groups or parents were invited to these meetings.

78. In none of the consultations held in 2008 or 2014 were parents at large given an opportunity to provide feedback and make their views known about the HPE curriculum. The only parents who provided feedback in these consultations were parents selected by school principals from the membership of school councils, parents who were members of Parent Involvement Committees, and parents who were members of the invited organizations mentioned above.

79. A number of concerns were raised regarding the extent and sufficiency of the parent consultations in 2008 and 2014.

80. For example, on June 1, 2015, the Member of Provincial Parliament (“MPP”) for Lambton-Kent-Middlesex presented a petition to the Legislative Assembly. The petition called for the government to “repeal the sex education component of the health and physical education curriculum” and to “start over with a meaningful parental consultation process”. The petition was signed by 185,000 people. The MPP’s statement on the petition is attached hereto as **Exhibit “19”**.