Queering Schools, GSAs and the Law: Taking On God

Donn Short

Donn Short is a playwright and Assistant Professor of Law at the University of Manitoba. His book, *Don't Be So Gay! Queers, Bullying, & Making Schools Safe* is to be published by UBC Press, 2013. He is the author of the award-winning play, *Full Frontal Diva: The Forgotten History of a Dead Queer*, which was produced Off West End at the Finborough Theatre.

Abstract: In this paper the author investigates the reach and potential of "the law" to transform school culture for queer youth. In particular, the author looks at ways in which the law offers, arguably, the best present and future challenge confronting the work that needs to be done in the queering of Canadian schools. From a Canadian legal perspective and tradition, this confrontation is represented in the brewing battle between equality rights claims grounded in sexual orientation, on the one hand, and religion-based claims on the other – in short, taking on God.

Introduction

"Legal pluralism" is a point of view that regards "law" as a cultural creation that takes many forms and guises. Legal pluralists find "law" unfolding in many places– law is not, for example, found only in courtrooms and legislatures. Accordingly, in a pluralist sense, it is not just judges, lawyers, the police, legislators and other state actors who are involved in the creation, regulation, amending, monitoring, and dispensing of "law". Under a pluralist configuration, law can be found in every corner of our culture. For example, the pressure we feel to conform to peer pressure or the approval or disapproval of our families can be a profound regulatory influence on our actions as well as our non-actions and operate in "law-like" ways (Arthurs, 1985).

For young people, this kind of pressure or regulatory influence from their peers may be the most determinative of these behaviours. The so-called "law on the books", official, state-issued law, while perhaps the most visible and recognizable form of "law" in the lives of high school students (as well as others, of course), may not, in fact, be the "law" that is most responsible for informing their behaviours and choices, conscious or unconscious (Short, 2010). Family belief systems, gender codes or religious dogma also come into play. These other regulatory *regimes* can be seen as "law like" and have tremendous influences on behaviours (Merry, 1988).

Obviously, then, this broader view of what is and is not law or "law-like" – "legal pluralism" – brings with it tremendous implications for policy reforms, generally, and most particularly in addressing homophobic and transphobic cultures in schools. Legal pluralism demonstrates that programs, policies and state-issued law alone, while an important determinant of students' experiences, may be insufficient to effect a transformation of school culture without also taking into account other normative orders

operating within youth culture (Jackson, 1968; Freire, 1970; McLaren, 1994; Barakett & Cleghorn, 2000; Giroux, 2001; Savage, 2007). In the opinion of many queer youth, safe schools are achievable only when safety is conceptualized in terms of equity and social justice (Short, 2010). However, the objectives, approaches, and practices of equity can be, and sometimes are, subjected to and complicated by other normative influences (such as religion, gender codes, family beliefs, and peer pressures) operating within school spaces (Short, 2010). Understanding that bullying and oppression occur because some students are queer and appreciating the implications of legal pluralism in constructing safe schools means that the culture of schools must be transformed. In short, a pluralist approach demonstrates the need for transformational responses. A transformative approach targets not just homophobia and transphobia, but also privileges associated with the heteronormativity of school cultures.

It might be assumed that laws have their intended consequences. Legal pluralism directs us to consider rather than to assume the effectiveness of state-issued law and policy approaches. A pluralist approach does not demonstrate that state-issued law is not, in fact, an effective answer to the oppression of queer students (law may be the best answer, in fact, to widespread valorizing of queer rights as well as cultural change); rather, legal pluralism directs us to consider the reach of legislation and policies as currently written and enacted and how best to go forward with transformational goals in mind (Short, 2010). In sum, the most effective approach would call for laws, policies and programs that mandate curriculum and educative responses to transform the schooling experience of all students.

Legal pluralism directs us toward an assessment of current law and policies and their effectiveness when taken into account with other regulatory influences operating presently in schools. In other contexts and at other times, I have written about the *limits* of the law (Short, 2007). The effectiveness of legislation and policies is compromised by failing to account for social norms within youth cultures. It is the hegemony of these norms that validates negative notions of difference, leading to the privileging of "normal", homophobic/transphobic bullying and other forms of oppression. Queer youth are, then, easily "othered" and targeted often despite state law or school policies.

In this article, however, I want to write about my belief in the *reach* of the law and the ability of the law to take on what sits as the major social norm and major obstacle to transforming schools and which constitutes the present and future challenge confronting the work that needs to be done in the queering of Canadian schools – the inevitable confrontation with religion. From a Canadian legal perspective and tradition, this confrontation is represented in the confrontation between rights claims grounded in sexual orientation, on the one hand, and religion-based claims on the other – in short, taking on God.

In considering law and policy reform with a particular emphasis on changing school culture, the ultimate solution to the power of religion, the "snitch" culture operating among students and the social construction of gender may very well be cultural transformation starting in the *early* grades. I do not argue that official law is not up to the task of addressing the oppression of sexual minority students; in fact, I have come to believe more and more that ultimately, widespread transformational solutions must come

from state-issued law. I want to begin by briefly setting out some of the law that is already "on the books" (but somewhat ignored, particularly in mainstream discourses) and how, in contemplating "next steps" to achieve what we do not yet have, the queering of schools, "official" and "state-issued" law can be used by those seeking the widespread cultural transformation of schools.

Gay-Straight Alliances (GSAs)

My previous work has explored how and to what extent formal law or state law interacts with other normative orders – such as religion – in the educational context and it is upon religion and religion-based legal claims that I want to focus in this article. Quite simply, freedom of religious expression needs to be a little less free. Three contexts in particular – marriage, employment and education – underscore that our increasingly diverse, complex society demands a reconsideration (a first consideration?) of the limits of freedom of religious expression and religious exceptionalism. Religious exceptionalism can be thought of as actions (or non-actions) permitted on the basis of religious belief that would not otherwise be permitted without that belief. I have argued religion-based claims, unlike the assertion of rights based upon sexual orientation, primarily seek to deny inclusion (or services or employment) to those who have legal rights guaranteeing inclusions [*Hall (Litigation guardian of) v Powers*, 59 OR (3d) 423, 213 DLR (4th) 308 (Ont Sup Ct); *Heintz v Christian Horizons*, 2008 HRTO 22, [2008] OHRTD No 21; *Chiang v Vancouver Board of Education*, 2009 BCHRT 319 [2009] BCHRTD No 319)]. Religious accommodation is desirable in cases where it facilitates inclusion and not the exclusion for others; however, religion-based claims must not be upheld at the expense of the exclusion and oppression of sexual orientation claims, including sexual minority students (MacDougall & Short, 2010).

Having conceptualized Canada and the confederation compromise in terms of Protestantism and Roman Catholicism, who among those founding fathers would recognize the landscape of multiple faiths today and, indeed, the more frequent acknowledgment of non-believers in public discourse, the heretofore radical idea that many people live their lives without subscribing to any religious belief? Who could have envisioned a Canada of same-sex marriage? Certainly not the federal parliament who, having been assigned the right to define marriage under section 91 of the *Constitution Act, 1867*, had never done so until the twenty-first century.

Moving into the second decade of the twenty-first century, cognizant of multiple religious faiths, the presence of non-believers, queer citizenship and the legal recognition of same-sex marriage, we have arrived at a juncture where it was inevitable that equality protection on the basis of sexual orientation – whether constitutional protection or on the basis of human rights legislation – would come into conflict with those asserting certain claims based on religion (MacDougall & Short, 2010). When sexual orientation equality claims were first made, the religious nature of the opposition to these claims was not always overtly voiced. One means of "beating back" queer claims to protection under the law had been by cloaking legal issues as moral disagreements in discourse surrounding queers and religion (MacDougall & Short, 2010). Resistance to and arguments against

sexual orientation claims for equality stressed an allegiance to "tradition" and "social norms" and were framed in those terms. Now, however, arguments against equality claims for queers are pretty much exclusively and overtly religious in nature.

Particular issues have surfaced that underscore the unavoidable competition between sexual orientation and equality claims: same-sex marriage, hiring policies at denominational facilities offering services to the public, use of, or reference to, religious standards to set public policy and the offering of public services, notably in schools. My focus, here, is on the latter. I critique claims for religion-based exceptionalism and argue that acceptance of the religion claim in these areas would involve unjustifiable curtailment of citizenship for queer people and would undermine the equality gains that have been made by this group.

The predictable backlash against equality protection on the basis of sexual orientation illustrates, in the contentious arena of schools is efficiently illustrated by recent actions of the governments of Alberta (in a step backward) and Ontario (a step forward). It has been fourteen years since the Supreme Court of Canada ruled in 1998 in the matter of Delwin Vriend, a high school teacher who was terminated after acknowledging his sexual orientation to his principal. At the time, sexual orientation was not a protected ground against discrimination in employment in Alberta's human rights legislation. In *Vriend v Alberta,* the Supreme Court made clear that provincial human rights legislation was required to conform with the equality provisions of the *Charter* and therefore must include sexual orientation. Even though the words "sexual orientation" do not expressly appear in the *Charter*, in 1995, in *Egan v Canada*, the Court, had ruled that sexual orientation was sufficiently analogous to the list of specifically enumerated grounds of protection (race, religion, sex, etc.) listed in the *Charter*, that the *Charter*, therefore, also included protection from discrimination on the basis of sexual orientation. Of course, the *Charter* offers equality protection with respect to a law, program or activity of government.

It is crucial that human rights statutes also include protection on the basis of sexual orientation in order to offer protection from discrimination in such areas as private employment and housing. While the remedy fashioned by the Supreme Court was to treat the Alberta legislation as though sexual orientation were included in the language of the act, only recently did Alberta amend its legislation to include the words "sexual orientation" (*Vriend v Alberta*, [1998] 1 SCR 493). That province's recently amended *Human Rights Act Ch. A-25.5*, however, contains a provision that has attracted widespread commentary. Section 11.1, gives parents the right to remove their children from class whenever lesson are being taught that deal "primarily and explicitly" with "religion, human sexuality or sexual orientation." Alternatively, parents may choose to have their children remain in class but without any obligation to participate. Since the primary purpose of the recent amendments was to add (finally) "sexual orientation" as an enumerated protected ground to Alberta's human rights legislation, it is difficult not to view the added parental "opt out" provision as a legislative "tit for tat" by the state. If the province had wanted to equip parents with this "get out of class card" for their children, why was that not done by amending the *School Act,* which already provides, with a crucial distinction, a limited right of parents to pull students from class – and not the

Human Rights Act? Section 50 of the current *School Act* provides that parents may request, in writing, that their children be excluded from religious or patriotic instruction. The provision does not require parents to be informed in advance. It would appear with the amendment to the human rights legislation that the government wished to open the door to possible human rights complaints by parents against teachers and possibly, also, to prompt a chill in the classroom with respect even to approaching these topics under threat of legal action.

On the other hand, the Ontario Liberal government of Dalton McGuinty retreated from its 2010 plans to revise sex-education content in Ontario elementary schools to include, among other topics, the teaching of the acceptance of same-sex families in grade three. Nonetheless, its recently proposed *Bill 13*, also known as the *Accepting Schools Act*, underscores the kind of legal response that I argue is necessary to successfully queer schools, to make them safer by aiming at the transforming of the heternormative culture that now "others" queers and privileges "normal" (An Act to amend the Education Act with respect to bullying and other matters, 1st Sess, 40th Leg, Ontario, 2011). The *Accepting Schools Act*, which in effect would amend the *Education Act* of Ontario, would make it law that schools establish welcoming environments for queer youth and provide supports, such as gay-straight alliances (GSAs), if requested by students. As a result of widespread and largely religious-based protests led by some parents' groups and particularly by the Ontario Catholic School Trustees Association, however, GSAs and what GSAs are called in Ontario Catholic schools has created a furor (Baluja, T. (2012, January 27). Catholic trustees prefer 'Respecting Differences' clubs to gay-straight alliances. (Globe and Mail). Objections that these student-led groups conflicted with so-called traditional and religious values – and now legal rights of Catholic school boards to manage their schools free from provincial interference – has come from Roman Catholic school boards, bishops, and trustees.

My position is that the answer to transformative possibilities, in fact, lies in an even more comprehensive queering of schools than what is proposed by *Bill 13*. As much as I welcome *Bill 13*, its scope is, arguably, necessarily limited to first steps, namely, a much-needed "pro-GSA" bill. Nonetheless, the importance of what is being proposed cannot be overstated – the bill acknowledges the presence of queer students in schools and targets the culture of schools by aiming to make space for them. At the same time, GSAs send a message to so-called straight kids that queer students are present and – by authority of the bill – welcome. Additionally, the bill comes out of a culture of bullying that recognizes "officially" that homophobic and transphobic bullying is occurring in schools and not just "generic" harassment. Too often, proposals aimed at generic bullying promote respect for all students and miss out on the particular type of harassment faced by sexual minority youth.

Very often, accommodation has largely been the answer in many cases to the competition between sexual orientation claims and religion-based claims – that things are fine the way they are, and that there are only a few, rare issues which accommodation finds problematic. On the other hand, perhaps confrontation between sexual orientation claims and religion-based claims is inevitable and welcome. The recent objections to *Bill 13* and the mandating of GSAs in Ontario schools when students request permission to

form such a group (and the right to be permitted to use the word "gay" in the name of the group) underscores that conversations about how to deal with homophobic and transphobic bullying in high schools and particularly that transformative possibilities can occur only alongside debates that include sexual orientation rights and their inevitable conflict with religion-based claims and religious exceptionalism. There has been, for too long, particularly in public discourse and among religionists, a mistaken belief in the sacrosanct or exclusive management rights of Roman Catholic school boards to "run their own show". This attitude has led, I assert, to the absurd view that religious dogma in some way justifies ignoring or indeed allowing to continue the harassment of queer students within the Roman Catholic school system – that his is a consequence of what Canada agreed to as part of its Confederation compromise and is, indeed, supported in law. I argue that this is not the case: upon undertaking a more nuanced legal examination of those rights to which denominational schools, Roman Catholic schools in Ontario, are entitled, the situation for the queering of schools is hopeful and its achievement inevitable.

The Law

The *Constitution Act, 1867* at Section 93, assigns exclusive jurisdiction over education legislation not to Ottawa but to the provinces. That authority is subject to this qualification found at subsection (1):

> Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union.

However, that right, like any right enjoyed under Canadian law, is not absolute. Section 93(1) merely " crystallizes certain pre-existing rights and privileges" that were vested in denominational schools within the provinces at the time of Confederation in 1867 (*Reference Re Education Act (Que)*, [1993] SCJ No 68 at para 28, 105 DLR (4th) 266).

In *Ontario English Catholic Teachers Association (OECTA) v Dufferin-Peel Roman Catholic Separate School Board* [1999] OJ No 1382, the Ontario Court of Appeal outlined two stages to the constitutional analysis of interpreting Section 93(1). It held at paragraph 19 that:

> Initially, one must determine whether there was a right or privilege enjoyed by a particular class of persons by law at the time of Confederation. If so, one must go on to the second stage of the analysis which is to determine whether the legislation at issue prejudicially affects this right or privilege: Quebec Association of Protestant School Boards v. Attorney-General of Quebec (1993), 105 D.L.R. (4th) 266 (S.C.C.) at 306-307. Within the first stage of the analysis concerning s. 93(1) one must answer two questions. First, what was the extent of the power of the Trustees at the time of Confederation? Second, in what measure is this power a "Right or Privilege with respect to Denominational Schools": Greater Montreal

> Protestant School Board v. Quebec (Attorney General), [1989] 1 S.C.R. 377 at 405.

The clear purpose of Section 93 was to achieve a political compromise by enshrining in Canada's constitution protection both for Roman Catholic education in the Province of Ontario and for Protestant education in the Province of Quebec. This section was intended to moderate disputes that threatened confederation as conflicts at that time were rooted in religion rather than language.

Section 93 of the 1867 Constitution Act must be considered in relation to our Charter, which was brought into law in 1982. Section 29 of the *Charter* provides that:

> Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

Equality claims grounded in the *Charter* have been recognized by the Supreme Court of Canada since 1995. In 1995, in *Egan v Canada*, the Supreme Court agreed that the words "sexual orientation" should be included among the classes of protected grounds of section 15(1) of the *Charter*. At the time the decision was released, many commentators and activists viewed the decision as a blow to equality rights. Understandably, reaction was focused on the Court's narrow definition of a common law spouse as a "person of the opposite sex" (*Egan*, p. 518). The Court, therefore, denied Jim Egan and John Nesbit's claim for a spousal allowance for Egan's partner, Nesbit, which would have been provided to qualifying heterosexual couples, married or not, under the *Old Age Security Act*. Today, however, the decision is regarded more for its landmark declaration that sexual orientation was to be considered a prohibited ground of discrimination under the *Charter* – leading eventually to the same-sex marriage cases and subsequent civil marriage legislation. Therefore, even though it is now well established that equality claims based upon sexual orientation are now protected under section 15 of the *Charter*, any such claim must be considered in light of the constitutional protection afforded to denominational schools under Section 93 of the *Constitution Act, 1867.*

Over the last year or more, the Roman Catholic Church and Ontario's Catholic school trustees have argued against permitting the creation of GSAs in Ontario Catholic Schools, often on the grounds that GSAs advocate for a "gay lifestyle" which is in direct conflict with Church teaching and the religious freedom of Catholic school boards to decide these matters as guaranteed to them under Section 93. This is the same kind of argument that was made by the Durham Catholic District School Board when it attempted to deny Marc Hall the right to take a male date to the prom (*Hall (Litigation guardian of) v Powers*, 59 OR (3d) 423, 213 DLR (4th) 308 (Ont Sup Ct).

In Reference *Re Bill 30, An Act to Amend the Education Act (Ontario)*, [1987] 1 SCR 1148, Madam Justice Wilson held that section 93 acted to freeze the protected rights of Catholic schools as at 1867. In the Marc Hall case, Mr. Justice MacKinnon wrote:

> There was no explicit statutory right of either Catholic Boards or common school Boards in 1867 to hold school dances or to control those who could or could not

> attend those dances. The current Education Act of Ontario in its co-instructional activities sections now give Boards that explicit authority.

Equally, there was no such right in Catholic boards to control extra-curricular activities, including GSAs, which did not exist at the time of confederation. *Adler v Ontario,* [1996] 3 SCR 609 holds that it is only the right guaranteed under section 93 and the existence of section 93 itself which are immunized from Charter scrutiny. Therefore, any argument by Catholic school boards that Section 93 would trump a Section 15, Charter claim, grounded in sexual orientation, would be dubious. The only rights of the Catholic school boards that would be protected under Section 93 would be those rights that existed in 1867.

The Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools, S. Prov. C. 1863, 26 Vict., c. 5 ("Scott Act"), in effect in 1867, gave Roman Catholics the right to an independent administration. The *Reference re Bill 30* makes clear that this independent administration is limited and subject to amendment. Justice Mackinnon articulated some of those limitations in respect to Marc Hall's situation that are relevant to current debates surrounding GSAs. MacKinnon is worth quoting at length:

> The defendant Board argues an implicit or inherent right to regulate those who can attend school dances based on denominational concerns under the generic umbrella of school management. "Management" in its ordinary sense is broad enough to encompass absolutely anything and everything that happens in a school system. If the Board's view was correct, then section 93 would mean that Catholic schools had unfettered authority to do whatever they like on any matter. That is not the law.
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> …"Management" within the meaning of the Scott Act (the educational legislative statute in effect in Ontario in 1867) did not contemplate the regulation of students in their extra-curricular activities. The current Education Act is highly detailed in that regard.
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> … The question is this: Does allowing this gay student to attend this Catholic high school Prom with a same sex boyfriend prejudicially affect rights with respect to denominational schools under section 93(1) of the Constitution Act, 1867? I find the answer to this question is "no" … .
>
> …[I]t is my view that Principal Powers' decision was not justified under section 93, both because the specific right in question was not in effect at the time of Union in 1867 and because, objectively viewed, it cannot be said that the conduct in question in this case goes to the essential denominational nature of the school.

The Court found that the prom was not a function with primarily religious significance and, therefore, that the protection of religion was not of primary importance. Marc Hall's request to bring a same-sex date to the prom did not prejudicially impact the central denominational nature of the school. Furthermore, applying the standard set out

by the Supreme Court of Canada in *Reference Re Bill 30, An Act to Amend the Education Act (Ontario)* [1987] 1 SCR 1148, [1987] SCJ No 44, the specific right being asserted by the Catholic School Board – namely, the right to regulate extra-curricular activities including the school prom – was not within their protected rights at the time of Confederation and could not, therefore, be claimed by the school or the school board as a constitutionally guaranteed right in 2002 and equally as a protected right in 2012 or 2013 with respect to GSAs. As a precedent, the *Hall* case was restricted to whether or not an injunction should have been granted by the Court and the full adjudication of these issues, as set out above, must occur in another case.

The Queering of Schools

Contrary to what many assert in support of the rights of Catholic school boards, the law to support the queering of schools is in place and there is the will to achieve more. One reason that the law is a hopeful possibility is that state-issued law addresses one of the reasons school administrators are reluctant to deal with bullying, including homophobic and transphobic bullying, head-on – acknowledging the presence of bullying and harassment is acknowledging, potentially, liability. Administrators are hesitant to do this (Short, 2010). Top-down legislation removes that obstacle.

What, then, is required is more specific law and policy reform to fill in queer details. That kind of law and policy reform is currently taking place in Ontario. *Bill 13* was introduced in the Ontario Legislature on November 30, 2011 to address the issue of bullying in Ontario schools and requires all school boards in Ontario to implement policies that address bullying and to "promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability" (*Bill 13*, p. 1) The bill calls for "activities or organizations that promote the 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 name" (*Bill 13*, s 303.1[d]). However needed and welcome this bill may be, another limitation of the bill is that it applies only to high schools and not to elementary or primary schools. I have argued elsewhere, and earlier in this paper, that cultural transformation must include and begin at the earliest grades (Short, 2010).

The framing of a legal argument remains to be seen; the matter has not yet been tried or adjudicated; however, I assert that the basis for claims that Roman Catholic school boards, bishops and trustees are solely responsible for deciding these matters is suspect and their jurisdiction in serious doubt. It is a question to be tried whether or not denominational schools could raise *Charter* and/or human rights claims to challenge *Bill 13*; however, if courage lasts, *The Accepting Schools Act*, human rights and equality laws and laws governing the delivery of education in the provinces and territories may be the most hopeful answer for queer students in Canadian schools. As I have argued elsewhere, religion-based claims are grounded in excluding others from participation in public space, namely queers and queer students; by contrast, human rights and *Charter* claims based on the basis of discrimination grounded in sexual orientation are expansive, exclusive claims

that seek to increase participation in the public sphere, in full citizenship (MacDougall & Short, 2010).

Jurisprudence and legislative responses have transformed the position of sexual minorities in Canadian societies. While high schools have lagged far behind or been shut out of that legal reconstruction of queer persons in society, it may be that it is now their turn in a post same-sex marriage rights society. News and social media paid significant attention when, in October, 2011, Jamie Hubley, 15, died by suicide in Ottawa after battling depression and being bullied because he was the only openly-gay teenager in his high school. Canadian culture, generally, has taken notice that the culture in schools needs to change.

The *Accepting Schools Act* applies to publicly-funded public schools and denominational separate schools – which signals another significant aspect to the need for well-articulated ministerial intervention. The legal construction of safe schools will include a confrontation with competing religion-based rights claims. The emergence of this competition between religion and sexual orientation claims cannot be avoided. Students like Azmi Jubran, Gabriel Picard, and others who have filed human rights complaints against their school boards, who conceptualize the solutions to their harassment and oppression in legal terms, seek access that others already have.

However, one argument against a top-down legislated response that targets school culture could be that a mandated non-oppressive climate for sexual minority students could be resisted because it is being mandated. The argument could be made that unless the cultural transformation being legislated is something that activists and those affected by the laws have struggled for or "won" there will be no purchase in the law. My response to that argument is that "buy in" or acceptance already exists. Public awareness is heightened. In the year preceding Jamie Hubley's suicide in Canada, in the United States, within three weeks, at least six teenaged boys committed suicide in incidents related to queer-based harassment – Tyler Clementi, Seth Walsh, Raymond Chase, Billy Lucas, Asher Brown and Caleb Nolt died by suicide in 2010. Many educators and activists have been working for years – and quite visibly – to address homophobic bullying in schools. Widespread legislative action aimed at transforming the culture of schools is required, can be sustained and will be accepted. It is unfortunate to say the least that, for many, it has taken such visible and publicized deaths to make the point that sexual minority youth face oppressive climates in schools and that something must be done.

There are numerous educators whose research into the heteronormativity and heterosexism in schools is well established and significant (Kumashiro, 2000; Rofes, 2005, Sears, 1997; and Epstein, 1997). They have investigated heteronormative orders in school and theorized about "queer education" and critical pedagogy as possible approaches to tackling normative gender and sexuality regimes in schools. There is a significant absence of socio-legal work investigating the potential of "law" to achieve social justice goals for queer youth and, it must be said, for the benefit of so-called "straight" students, who are also oppressed by, and subjected to, the burdens of normative gender and sexuality regimes. What I have tried to demonstrate is the need to consider law's potential from a pluralist perspective. Only by appreciating that there is a

multiplicity of regulatory regimes at work in youth culture can the totality of the task of resolving issues of bullying and oppression of queer students be comprehended and achieved institutionally through official legal responses.

Kumashiro (2000) argues and my own research confirms (Short, 2010) that, depending on how it is defined, mere "inclusive" education is inadequate. More broad-based approaches of anti-oppressive education, which place culture itself in its sights, including the privileged and the othered, are required. Cultural transformation is not going to happen ad hoc; it is not going to happen only because teachers have been encouraged in their teacher training to undertake social justice concerns in the classroom. Too many teachers do not see the safety concerns of sexual minority youth as part of their jobs; too many lack time. Many courageous teachers have led this charge. Many efforts have been undertaken through student-led activism. All of this work is moving and valuable. Emphasizing law makes the issue of bullying, harassment and oppression an institutional concern targeting structures and not merely an approach that relies upon an individual teacher's sense of social justice or a student's bravery. In this approach, bullying and oppression are reconfigured as cultural issues.

It is clear that the culture of schools must be transformed. Given that curriculum is one component of a larger school culture, changing curriculum is a partial answer and inclusive education remains a partial solution. Challenging privilege and the marginalizing effects of privileging normal (Kumashiro, 2000) requires widespread changes – the kind of changes that can be brought about by courageous legislators that conceptualize the position of sexual minority youth as a school-wide, cultural issue.

Cultural transformation should not be carried out on the backs of teachers and students and, in fact, it may not be possible, corner-to-corner. What my work shows is that, at best, and although we should be very grateful for it, the work of some great teachers and students creates pockets of relief, oases within a much larger, bleak climate. The curriculum must change to include queer content and to recognize queer families, but the curriculum will not change unless the Ministries of Education direct it to change and if queer youth are reconstructed legally as full citizens within the school. That response lies a wall-to-wall transformational approach that also considers the playing fields, the stages, the artwork on display in hallways, media classes, sports, music, visual arts, friendships, libraries, music rooms, loyalties, clubs, the machine shops, the gyms and the classrooms in pursuit of a time when sexual minority youth may participate and thrive with their interests vested and valorized on and off school property for the time that schools are such a crucial part of their lives.

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