

## Religious schools have every legal right to enforce the tenets of their faith

JOHN CARPAY

Justin Trudeau recently suggested that the Charter of Rights and Freedoms prevents Parliament from legislating on abortion. In fact, in the Supreme Court of Canada's 1988 Morgentaler decision, the justices held that Parliament does have a right to legislate on abortion, even if the previously existing abortion-regulation regime had been unconstitutional.

In similar fashion, politicians in Alberta have recently claimed that the Charter requires religious schools to abandon policies governing the moral behaviour of teachers and students. Liberal education critic Kent Hehr says that codes of conduct based on a Christian understanding of marriage and sexuality "are not only highly offensive, but they are also blatant violations of the Canadian Charter of Rights and Freedoms and the Alberta Human Rights Act." Wildrose Opposition Leader Danielle Smith agrees entirely, calling on the PC government to ensure that no publicly funded school in Alberta has any "discriminatory" policies.

This battle cry of "no discrimination" ignores the fact that, under human rights law, schools and other employers can legally discriminate on the basis of religion, disability and other grounds when the job in question so requires. Canada Post can legally refuse to hire a disabled person for mail delivery — but not for office work. Being able-bodied is a bona fide occupational requirement for the former position, but not the latter.

The Supreme Court of Canada, in the 1984 case of *Caldwell v. Stuart*, upheld the decision of a Catholic school to

terminate a teacher's employment because she openly and publicly repudiated Catholic teaching about marriage and sexuality through her conduct outside the classroom. The teacher's human rights complaint was dismissed because religious schools have a legal right to insist that their teachers be practising adherents of the school's faith. The Court recognized this as a bona fide occupational requirement because the off-duty conduct of teachers impacts the educational environment: Teachers are a "medium" of the values, beliefs, knowledge and character the school seeks to transmit.

Alberta parents, all paying education taxes, enjoy more educational choice than parents in any other province. Alberta's education taxes are spent on a wide range of different school choices, including Catholic, public, private, publicly-funded alternative and "charter" schools, and home-schooling.

Consistent with their teachings about marriage and sexuality, Alberta's Catholic and other religious schools have codes of conduct for teachers and students. In some cases, these codes expressly prohibit adultery, pornography, and all sexual activity outside of the marriage between one man and one woman.

When Mr. Hehr and Ms. Smith argue that no teacher should be fired because of sexual orientation, they ignore the fact that schools have codes of conduct, not codes of being. They also ignore the fact that a religious school's behavioural

expectations apply only to teachers who voluntarily choose to work at that school.

Regardless of their sexual orientation, and regardless of their beliefs (religious or otherwise), teachers in Alberta have an abundance of different employment opportunities within a broad range of diverse schools. Why would a teacher who disagrees with the behavioural demands of a particular faith desire to work at a school community that is based on, and strives to live out and practice, that particular faith?

Besides ignoring the legal principle of bona fide occupational requirements, Mr. Hehr and Ms. Smith fail to understand that the Charter does not serve to suppress religious belief, but rather protects its expression. The Alberta Human Rights Act and School Act appropriately respect the Charter value of accommodating religious belief, and in doing so maximize educational choice for parents. Moreover, the Charter does not prevent any province from funding religious schools, and in some provinces the Constitution expressly requires this funding.

The Alberta government can listen to Mr. Hehr and Ms. Smith and reduce educational choice for parents, if it wants to. But contrary to these politicians' claims, this is not required by the Charter or by human rights legislation.

**Calgary lawyer John Carpay is president of the Justice Centre for Constitutional Freedoms JCCF.ca**