Should Christian public schools be able to fire a homosexual teac

her that claims to be homosexual?

The Charter of Rights and Freedoms guarantees all of the rights outlined in it subject

to only such limits as would be justified in a free and democratic society.

Is it reasonable in a democratic society for a faith based organization to restrict the equality

rights of a homosexual teacher? Danielle Smith, has taken a clear position. Reporter

Dawn Smith, in the Airdrie Echo on April 22, 2014 reported that, " Wildrose leader Danielle Smith called on Johnson to ensure no publicly funded schools has policies that discriminate.

"There is absolutely no room in Alberta's publicly funded education system for policies

that infringe on individual rights enshrined in the Canadian Charter of Rights and

Freedoms or the equality guaranteed under the Alberta Human Rights Act,

" she stated in a press release. "Recently, we have seen some examples of Alberta public schools that are out of step with both the Charter of Human Rights Act when it comes to LGBTQ teachers and students. This is unacceptable. You cannot be fired as a teacher or

expelled or be disciplined as a student based on your sexual orientation."

I believe this response while it may appear to place the Wildrose party on a more

"progressive" path also creates other issues that the party and all potential candidates

must consider:

1. Rights Conflict: There is a rights conflict between the right to equality before the

law and the right to freedom of religion, personal conscience and the very real position

that the law gives denominational and separate schools in Alberta.

2. It will not bring the social peace needed to live in the pluralistic society that Alberta

is today.

3. It ignores parental rights.

FREEDOM: THE PATH TO SOCIAL PEACE WHEN RIGHTS COLLIDE

A democracy provides it's people with a great deal of individual freedom and this in

turn has fostered a province that is incredibly diverse. We live in a pluralistic society

and as a Wildrose candidate I will defend the vision of an Alberta that respects diversity. It has been my experience that Albertan's not only respect the great diversity of the people of this province but also treasure this diversity. This diversity is reflected not only in colour, language, politics but also religion and personal conscience. Albertan's will only support those political parties that understand the need for tolerance and respect. But the question remains, in a democratic, pluralistic society, how do you resolve competing rights issues? Specifically, how can you balance the rights of gay people to equality before the law and Canadians of faith to their right to pursue their conscience, religious freedom rights and religious education rights when they come in to conflict?

I believe that the answer lies in establishing and maintaining a province where

individual freedom is valued and defended. We live in a democratic society where the

balance between freedom and control has a default towards freedom. Our provincial motto, "Strong and Free", recognizes that we cannot live without freedom. Albertan's understand that in order to live together we must at times restrict our actions but we also believe that in a democracy freedom rights should only be restricted in exceptional circumstances, for example, in order to protect life and the security of the people.

I believe that freedom allows a pluralistic and diverse society to thrive. Pluralism and diversity demand freedom, they are watered by and flower because of freedom. If you want people of different religions, values, beliefs, cultures etc. to live together in prosperity and peace you must have freedom. History is rife with examples of societies that implode into violence when they attempt to force people to believe something they don't believe in or to live in a way that denies their deeply held convictions. A prime example in the last year has been Quebec. By trying to pass legislation that would restrict religious rights and freedom of expression in order to assimilate people of faith into a secular Quebec the government create

d a societal fire storm. Only freedom can provide social harmony in a pluralistic society. It

is critical to uphold the fundamental freedoms found in the Charter because they are the best

defence of a strong,vibrant democracy and are the only foundation for social peace in a pluralistic society. Ordinary Albertan's, Canadian law and Canadian law makers have done a good job in the past of finding ways to balance competing rights in a free and democratic society and we should pay attention to the wisdom of past decisions when attempting to

answer this issue of competing rights.

In a democracy, the state is to be the servant of the people, not their masters. The state is there to serve the needs of families not to decide for them how they will educate their children. The parents, not the state, are charged with rearing, loving and making good decisions in the interests of their children. In a pluralistic society parents must have the freedom to control their chlidren's best interests. In the 1890's Manitoba changed from a predominantly French, Catholic population to an English Protestant population and education became a lightning rod issue. Would the French, Catholic population be forced to assimilate into the larger English speaking population? It was a battle royal dominated by language and religion that was only solved by the Laurier-Greenway compromise. This compromise decided that, "where numbers warrant," the Manitoba government would provide French language and catholic religious instruction within the school system of Manitoba. It was a controversial decision at the time but I think it points us down the path that we must follow in Alberta. While this decision did not provide French speaking Catholics universal access to French Catholic education but it did provide parents from that community the ability to provide a French Catholic education where numbers warranted. Freedom, not state coercion

and assimilation was the answer to the issue of diversity in Manitoba. When Manitoba

respected the rights of French Catholics to freedom of religion, language and parental

control of their children's education, social peace was achieved.

A more recent example of freedom helping to find balance in a rights conflict occurred

when the Vriend vs Alberta Supreme Court decision was rendered. After the Vriend

decision resulted in sexual orientation being read into the Charter of Rights and

Freedoms the Alberta government led by Ralph Klein did little to change the existing

law in Alberta. Under the leadership of Premier Ed Stelmach the Alberta government

introduced and passed Bill 44. Embedded in the new legislation was the Human

Rights Act recognizing sexual orientation as a Charter right. Also within the legislation

was a recognition of parental rights. The Alberta government would ensure that

parents had the final say over whether their children were taught about religion,

sexuality or sexual orientation at all.

11.1(1) A board as defined in the School Act shall provide notice to a

parent or guardian of a student where courses of study, educational program

s or instructional materials, or instruction or exercises, prescribed under that Act include subject-matter that deals explicitly with religion, sexuality or sexual orientation.

(2) Where a teacher or other person providing instruction, teachin

g a course of study or educational program or using the instructional materials referred to in subsection (1) receives a written request signed by a parent or guardian of a student that

the student be excluded from the instruction, course of study, educational program or use of instructional materials, the teacher or other person shall in accordance with the request

of the parent or guardian and without academic penalty permit the student

(a) to leave the classroom or place where the instruction, course of study or

educational program is taking place or the instructional materials are being used for

the duration of the part of the instruction, course of study or educational program, or

the use of the instructional materials, that includes the subject-matter referred to in

subsection (1), or (b) to remain in the classroom or place without taking part in the instruction, course of study or educational program or using the instructional materials.

While this introduced some confusion into the educational sphere Alberta teachers,

parents and students have learned to live within these parameters. Freedom was

again the answer to social peace and a new balance between charter rights. It found

a way to balance the right of parents to freely control the education of their child and

allowed the insertion of sexual orientation into the Alberta educational curriculum and

classroom.

RIGHTS CONFLICTS

All sides of this debate can agree that Albertans must uphold Charter rights. Ask

most Albertan's if they support Charter rights and they will eagerly agree. Do I

support freedom of speech? Absolutely!! Do I support freedom of religion?

Absolutely!! Do I support equality before the law? Absolutely!! It gets more difficult when we start talking about the limits that are acceptable to place on these rights and freedoms in a democratic society. Freedom of speech has limits, freedom of religion has limits and one of the questions that needs to be answered in this debate is, Does equality before the law have limits in the work place when it comes to sexual orientation? Is it reasonable, in a free and democratic society, for a religious institution, even a publicly funded religious institution, to fire an employee that does not live up to their contract when there is a morality clause attached to their employment?

The Canadian Charter of Rights and Freedoms in subsection 15 outlines equality

rights.

15. (1) Every individual is equal before and under the law and has the right to the equal

protection and equal benefit of the law without discrimination and, in particular, without

discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object

the amelioration of conditions of disadvantaged individuals or groups including those

that are disadvantaged because of race, national or ethnic origin, colour, religion, sex,

age or mental or physical disability.

In 1998 the Supreme Court ruled in Vriend vs Alberta that the Canadian Charter of

Rights and Freedoms would be read as if sexual orientation was part of the Charter

and therefore the LGBTQ community would fall under the protection of the Charter's

provisions. This meant that sexual orientation would now be considered when

applying the equality provisions of the Charter in the workplace. The Supreme Court

clearly saw the injustice that occurs when a LGBTQ person was discriminated against

in the workplace because of their sexual orientation. In the minds of many Canadians

the question was answered: an employer would not be allowed to fire or discipline an

LGBTQ employee because of their sexual orientation. Yet there is still a problem, the Charter of Rights and Freedoms also guarantees the right to freedom of conscience and religion and the right of Albertans to a denominational, separate and dissentient schools. In subsection 2 of the charter it states:

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including free

dom of the press

and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

**And in subsection 29 of the charter it states: 29.**

**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.**

These sections clearly allow Canadians of faith, including Albertans, a set of educational rights to religious education that may collide with the equality rights of a LGBTQ employee. There is a long history in Canada, and Alberta specifically, of publicly funded, religious education and in this case of recognizing that religious institutions will have the right to set morality clauses on it's employees. Historically, a teacher employed in a religious school would be expected to live up to, be a role model of, and support the religious values and beliefs of that particular religious faith.

 **In a brief entitled, Risk Management in Canadian Education, Volume 9, Number 4, May 2009, by Brian Vail, Kevin P. Feehan, and Fraser Milner Casgrain, the authors outline when a Catholic, denominational school, could reasonably use the constitutional concept of denominational cause to terminate a teacher using a morality clause within the teaching contract. "** The grounds used by a separate school district to sanction or terminate a teacher are only accorded the constitutional status of denominational cause

if they are denominationally related." ... **"Denominational cause is defined as serious departures from denominational standards by a teacher."**  ... In Conclusion, it

is clearly the case that all the law with respect to teacher appraisals and dismissals in Alberta apply to separate schools as well as charter and private schools. However, for Catholic separate schools there is an additional layer to be added to this law. **That is the right**

**of preferential hiring, promotion and denominational dismissal for cause. Appraisals**

**and dismissals for Catholic separate schools in Alberta require the addressing of**

**"Catholicity" in all aspects of evaluation."** This right has been recognized by the Charter, many court decisions, the government of Alberta and even the Alberta Teachers Association. In an article by Paula Simons in the Edmonton Journal, dated April 17, 2014 she quotes an ATA spokesman, " **ATA spokesman Jonathon Teghtmeyer says Catholic schools have a special protection that dates to the days of Alberta's francophone settlement."**

In an article printed on Life Site News dated Jan 13, 2014 reporter Peter Baklinski talks

about the case of Jan Buterman a transgendered substitute who was fired by the

Catholic School Board in St. Albert. " The case tests the right of Catholic Schools to

hire and teach according to their denominational beliefs, which are protected in the

Constitution Act 1867.

As a party member seeking the nomination for this constituency I will defend

all of the Charter, not just part of the Charter. **The concept of denominational cause which is upheld by Charter rights, legal precedent and the Canada Act sets the standard in a denominational, separate or dissentient school for when it is reasonable in a free and**

**democratic society to restrict equality rights. When it comes to denominational,**

**separate or dissenient schools there is a right to hire and fire based on the teachings**

**of the religious faith and the morality clauses that outline their faith positions.**

**Canadian Charter law clearly allows equality rights to be restricted when hiring and firing in a religious institution. This freedom given to denominational, separate and dissentient schools is a recognition that the path to social peace in a pluralistic society is to recognize the religious diversity of our society and provide a legal basis for it to reasonably function.**

The Wildrose party must work towards a society that upholds all aspects of the Charter and we must ensure that any restrictions on any of the rights accorded to Albertans are only those restrictions that would be justified in a free and democratic society.

PARENTAL FREEDOM TO CHOOSE

Most Canadians would agree with Article 26 of the Universal Declaration of Human Rights passed by the United Nations that,

" Parents have a prior right to choose the kind of education that shall be given to their

children."

The freedom we have given parents to control their children's education has helped Albertans to reconcile the issue of competing rights. As a Wildrose candidate that would be my position. Do I believe that LGBTQ teachers should have equality before the law? Yes, all Canadians have and should have this right. Does the right to equality before the law have limits? Yes, it would appear that at least one reasonable limit upheld by the constitution is the right to hire and fire for denominational cause.

Lastly, only individual freedom of choice constrained by what would be justified in a

free and democratic society is the way to organize our society and answer the divisive questions that arise in a pluralistic democratic society.