

Strengthening education through choice

On March 12 and 13, 2019, attention will be drawn to education in Saskatchewan as the Court of Appeal hears an appeal of a decision that has become known as the Theodore case (2017 SKQB 109).

While the legal arguments of the Theodore case centre around money—specifically the Government of Saskatchewan’s ability to use public funds to pay for the education of non-Catholic students enrolled in Catholic schools—the case is fundamentally about parental choice in education.

In his April 2017 decision, Mr. Justice Layh ruled that it is unconstitutional for the Government of Saskatchewan to fund non-Catholic students who attend a Catholic school. If the decision is not overturned, cost will become a significant barrier for non-Catholic families who choose Catholic education, which would effectively strip those parents of an educational choice for their children.

Catholic school divisions assert that keeping enrolment to Catholic education open to anyone who chooses that for their children—a practice older than the province itself—must remain an option for Saskatchewan families.

Publicly-funded education, which includes public and Catholic, is a hallmark of the principles we hold dear in this province: equity, accessibility, openness and inclusivity. No one school or school division can claim these exclusively. Publicly-funded education is not, and should not be, exempt from democratic principles of freedom and choice.

That is why we believe overturning the decision is necessary. We believe that parents are the first educators of their children and know what is best for their children. If a parent, any parent, desires Catholic, faith-based education—an educational experience where our faith permeates everything we are and everything we do—it should be their decision, not the court’s decision.

We recognize this choice may not be for everyone. But it should remain an option for everyone.

An analogy using French immersion schools may help illustrate our position. All parents are free to choose French immersion. It’s a choice many are making, but quite obviously it’s not for all families. Families are not required to be French, speak French or produce documents to define their eligibility to access French immersion. They are open to families who desire a unique educational experience for their children, no matter the reason. If, during registration, a parent were to state they really wanted to attend the school, but they didn’t want their child to participate in any of that “French stuff,” the school would logically suggest they find a school that better suits their desires, and no one would criticize the school administration for that decision.

Parents should be afforded the same freedom, without artificial funding limitations, when it comes to Catholic education. When parents, Catholic or not, say they want to attend our schools but don’t want their child to participate in any of that “religion stuff,” we make it clear that they are free to choose

another option, that public schools may be a better fit. Options should not be a luxury for some and a limitation for others.

With all of this in mind, we find it difficult to understand why a lawsuit that would force Catholic education to be open to some but closed to others is being advanced.

We believe we have a compelling case for our appeal. We believe the decision is contrary to a constitutional provision of the Saskatchewan Act (s.17(2)) which mandates that in the distribution of funding to public and separate schools, the government shall not discriminate against those public and separate schools. We believe the Charter of Rights and Freedoms should not be used to compel the Government of Saskatchewan to discriminate on the basis of religion in the funding of Catholic schools. Rather, it should be used to protect parental choice and keep Catholic education open to parents who make that choice, regardless of their faith.

We pray for a good hearing and a favourable outcome.

Tom Fortosky is the Executive Director of Saskatchewan Catholic School Boards Association representing all eight Catholic school divisions responsible for the education of more than 40,000 students in Saskatchewan.