

S.L. v. Commission scolaire des Chênes, **Frequently Asked Questions and Answers**

The following questions and answers are those that we have heard most frequently asked about the *S.L. v. Commission scolaire des Chênes* case (hereafter “the *Drummondville* case”), which will be heard at the Supreme Court of Canada on May 18, 2011.

The Evangelical Fellowship of Canada has been granted intervener status in this case and will be presenting arguments in favour of broad religious freedoms for parents and advocating for a truly plural society which is religiously inclusive.

A. Quebec Court Challenges

1. Why is the *Drummondville* case so important for Canadian parents?

Drummondville, a case originating in Quebec, will address the issue of whether parents have the right to choose the kind of education their children will receive, particularly in regard to religious instruction. The case will cut to the core of what freedom of religion and conscience and parental authority mean in Canada.

At issue is the Ethics and Religious Culture (ERC) program, a mandatory course which must be taught to all québécois children. The course has as its objective the instruction of children in a manner that will promote “the development of attitudes of tolerance, respect and openness”, thus “preparing them to live in a pluralist and democratic society.” The course is not a graduation requirement.

The perspective of many parents and the position of the mother in this case is that parents have and wish to retain the right to teach morality and religion to their children from their perspective, or decide who will do so on their behalf. The right to pass on one’s religious and cultural heritage to their children is a fundamental aspect of religious freedom and parental authority in Canada.

This position is supported by polling data. An opinion poll by Leger Marketing reported that 72% of parents in Quebec agree that parents should be able to choose between denominational religious instruction and the ERC program. Even Quebecers without children largely agree with that position (68%).

2. What is the history of the *Drummondville* case?

The parents in this case requested that their children be exempt from participation in the ERC program. The request was turned down by the school (as was every similar request made in the province of Quebec).

After following the appropriate appeal route at the school board level, the parents sought a judgement from the Superior Court of Quebec as to whether the mandatory nature of the ERC program violated their freedom of conscience and religion as protected by the Quebec *Charter of Human Rights and Freedoms* and the Canadian *Charter of Rights and Freedoms*. They also asked the court to address some administrative law issues relating to statements that the Minister of Education made in a press conference – that children could not be exempted from participating in the ERC program.

While the Court found that the parents and children were sincere believers in their Catholic faith, it ruled that the ERC program did not violate their freedoms of religion and conscience. It also ruled that the parents were unable to satisfy the court that their children would suffer harm as a result of being required to attend this program, therefore they would not qualify for an exemption.

The result of this decision communicates that the state may impose a curriculum that conflicts with the moral codes parents wish to instill in their children and that parents do not have ultimate authority over the moral and religious education of their children.

The Quebec Court of Appeal refused to hear the parents' request to appeal the decision of the lower court, but the Supreme Court of Canada has agreed to hear it in May 2011.

3. Is this the same as the *Loyola* case?

The *Drummondville* and *Loyola* cases are two separate cases. *Loyola High School v. Courchesne* is a related case that is still in the Quebec court system. *Loyola* involves Montreal's Loyola High School which sought the right to teach the ERC program from a Catholic perspective. The Ministry of Education denied the school permission to do so. Justice Gérard Dugré of the Quebec Superior Court stated that the decision to impose the course on the Catholic school demonstrated "a totalitarian character essentially equivalent to Galileo's being ordered by the Inquisition to deny a Copernican universe."

He found that the Ministry's mandatory course violated the school's freedom of religion under the Quebec *Charter of Human Rights and Freedoms*. This Ministry of Education's appeal of this decision is still waiting to be heard by the Quebec Court of Appeal.

4. Why did the judges in the *Loyola* and the *Drummondville* cases come to different conclusions?

Judges do not necessarily agree, especially when first confronted with a new challenge in the law. Further, this course is a departure from previous government mandated instruction that is being presented in the setting of significant social and religious upheaval that has occurred over the last 50 years.

The *Drummondville* case is about Christian parents seeking accommodation for their children. The *Loyola* case is about a Catholic school seeking to teach about Christianity, other religions and ethics from a Catholic perspective. One judge disagreed with the parents in *Drummondville*, a decision the EFC disagrees with, and another agreed with the school in *Loyola*, a decision which the EFC considers reflective of the law that should be applied in both cases. The Court of Appeal made its decision in the *Drummondville* case on narrow technical grounds. That's why the hearing of the *Drummondville* case by the Supreme Court of Canada on May 18 is so important. The decision by the SCC will ultimately be determinative of both cases.

5. How does a case dealing with a Quebec curriculum affect all Canadian parents?

While the case being heard is dealing with Quebec curriculum, the Supreme Court of Canada will have to comment on religious freedom, freedom of conscience and parental authority when rendering its decision. This decision, as it is from the country's highest court, will have incredible precedential weight and be binding on all other courts in the country. It will also significantly influence how other provincial governments address the issue of potentially controversial curricula and accommodating parents' beliefs, values and wishes for their children's education.

B. Ethics and Religious Culture Program

1. What is the ERC program and why is it so controversial?

The course is mandatory in the sense that it is required to be taught to all students. However, oddly, the successful completion of the course is not required for graduation.

The program was mandated at the beginning of the 2008-2009 school year for students from grades 1 to 11, whether they are attending private or public schools or if they are homeschooled. It addresses morality and various world religions including Christianity, Judaism, Islam and Hinduism.

Parents in the evangelical Christian community are split on the ERC program. Some welcome the opportunity for children to learn about the contribution of religious communities to the culture of Quebec. Others are concerned that the format used for teaching young children about a variety of religions, as

required by the course, will convey to them that all religious beliefs and all moral codes are relative or of equal merit, i.e. they are all the same.

However, most agree that parents should have the right to choose whether or not their children participate in the program. Unfortunately, every parent who has requested that their children be exempted from the classroom has been refused.

2. What are the positive and negative aspects of the ERC?

The course offers the positive aspect of reflecting on the contribution of religious communities to the culture of Quebec. Unfortunately, the interpretation and context of the government designed curriculum is an interpretation of history, current events and religious belief that is very selective and does not recognize the legitimacy of the sincerely held religious beliefs concerned.

3. How does the ERC program affect the parent-teacher-child relationship?

The ERC program puts parents, teachers and students in a difficult position, notably for those families that have sincerely held religious beliefs.

Parents have expressed concern about how their children will be affected by being taught one understanding of religion, morality and ethics at school and another at home. The child is put in the unenviable position of having to determine, at some point, which authority to trust and/or which to be untruthful with. Parents do not wish to have their child's trust in their educators undermined, nor do they want their children to lie to educators about their religious beliefs or religiously informed position on ethics and morality in order to pass a course at school. Children should not be required to engage in this type of cognitive dissonance.

C. Effects on Religious Freedom and Conscience and Parental Authority

1. What are the potential implications for parental rights in Canada, if the decision goes against the family challenging the ERC?

If the Supreme Court of Canada gives license to the Government of Quebec to force children – in public schools, private schools, religious schools or being home schooled – to be taught religion as the government understands religion to be and ethics based on situation and conversation without a foundation in truth, then our country is headed for disaster.

Democracy or not, when the state makes decisions to set up the authority of the classroom and the teacher on religious instruction as determinative against the authority of religious communities and parents, the country moves toward a state controlled society that will, if history bears out, in short order ignore citizen's freedoms and rights. In short, Canada will shift away from a pluralist democratic society and head toward something of a more totalitarian nature.

2. What are the potential implications for religious freedom in Canada, if the decision goes against the family challenging the ERC?

In Canada, we currently face challenges to what has traditionally been a strong constitutional and legal foundation for freedom of religion.

There are currently challenges to our freedom to practice our beliefs, particularly more public components of practice. For Evangelicals that would include things such as outdoor meetings in public spaces; school clubs; comment on social issues from a biblical perspective in the news media; and, even the selection of location for new worship facilities. These are just a few examples of noteworthy challenges facing the Church in Canada today.

Belief formation is a more complex process and thoughts are more difficult to monitor. Historically, parents have determined how and who will provide religious instruction. If the state mandates instruction on religious belief, that creates contradiction between parental authority, along with their chosen religious authority, and the authority of the school and teacher.

Approval of this type of course would most likely lead to the type of persecution seen in other nations where state-approved religion and religious instruction is acceptable and non-approved religious instruction, belief and practice is punishable.

The sound research of Brian Grim and Roger Finke, published in their 2010 book *The Price of Freedom Denied*, demonstrates that religious freedom and tolerance for the beliefs of others are diminished when the state mandates religious instruction from the state's perspective.

If the government decides what will be taught as true about religion then Canada has a major problem. Freedom of religion, as defined in a series of Supreme Court of Canada decisions – the vast majority of which have included presentation from the EFC, will lose its robust nature if parents and the very religious communities and leaders they trust to educate their children about religious beliefs and worship are identified as somehow naïve, brainwashed or intolerant by the state imposed curriculum. True religion will stand only on the same footing as ancient mythologies if taught in the classroom according to the ERC curriculum or the type of curriculum that will be developed in other provinces if the Government of Quebec is successful in this case.

3. Does the law support the position that parents should have the right to determine what type of education their children will receive?

Yes, as the law currently stands, parents have the right to determine what kind of education their children will receive. In Quebec for example, the *Charter of Human Rights and Freedoms* states at section 41 that parents have a “right to give their children a religious and moral education in keeping with their convictions.” Section 3 guarantees the right to freedom of conscience and freedom of religion.

Section 2 of the Canadian *Charter of Rights and Freedoms* assures both freedom of religion and conscience in regard to government action – from school boards to Parliament.

Additionally, there are a number of cases from the Supreme Court of Canada which support and describe this right, including: *R. v. Big M Drug Mart Ltd.*, (*B.*) *R. v. Children's Aid Society of Metropolitan Toronto*, *The Queen v. Jones*.

There are also a number of international human rights instruments that support broad parental authority, including *The Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* which states that,

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religion and moral education of their children in conformity with their own convictions.

4. Are classroom exemptions really a sufficient means to accommodate the religious beliefs and parental rights of parents?

It is interesting that in the 1980s, in Ontario, the issue before the courts was whether exemption from participation was sufficient accommodation in regard to the saying of the Lord's Prayer in opening exercises for the school day.

The Court of Appeal noted that exemption was inadequate because it singled the exempted children out for potential ridicule by their peers. The court also noted that while religious instruction in the public schools was permissible, that instruction was not to be mandated, determined or directed by the government or else it could be found to be state imposed indoctrination.

In *Ross v Moncton District School Board* the Supreme Court of Canada ruled that the classroom is to be a welcoming place for all students. As a result, exempting a student might or might not be a sufficient accommodation. Other measures may be necessary. For example, in Alberta there is a school board that has separate class space for Christian students to receive instruction in certain subjects from Christian teachers using a curriculum that founds its instruction in biblical principles.

5. Do other provinces permit children to be exempted from course material that is inconsistent with their parents' beliefs?

Provinces across Canada permit classroom exemptions, either in regulation or practice, or other forms of accommodation.

For example, in 2009, the province of Alberta amended the *Alberta Human Rights Act* to include a provision which requires that parents be advised when children are being taught about religion, sexuality or sexual orientation. If a parent objects to the material, their child may be excused from that class.

Further, in Ontario in 2010, a spokesperson for the Ontario Ministry of Education stated that,

If there is a component of any course, in conflict with the personal beliefs of the parents, something they don't believe in, the parents can withdraw the student from that component of the course.

Providing accommodation for parents and children is a normal part of living in a pluralistic society and is a practice that governments are well familiar with as part of their duties and obligations under human rights laws and the *Charter of Rights and Freedoms*.

D. Living in a Plural and 'Secular' Society

1. Isn't this type of program necessary if a child is going to live in a secular society?

The term secular is often misunderstood to mean a society that excludes religious thought and perspective. This isn't the case. In a 2002 Supreme Court of Canada decision, it was stated that,

In my view, Saunders J. below erred in her assumption that "secular" effectively meant "non-religious". This is incorrect since nothing in the *Charter*, political or democratic theory, or a proper understanding of pluralism demands that atheistically based moral positions trump religiously based moral positions on matters of public policy....The problem with this approach is that everyone has "belief" or "faith" in something, be it atheistic, agnostic or religious. To construe the "secular" as the realm of the unbelief is therefore erroneous. (*Chamberlain v. Surrey School District No. 36.*)

Those who continue to uphold the belief of a non-religious or non-inclusive form of secularism suggest that their form of secularism ensures freedom of religion for every individual by recognizing an "equality" of all religions, although denying their unique and exclusive claims. This results in stripping the religious person of the right to express their beliefs, publicly ground their position on other issues in those beliefs or comfortably participate in the public sphere without suppressing their beliefs. This, in effect, pushes the authentic religious into ghettos and out of the larger society and the discussions that take place in the public square.

The ERC program does just that. By purporting to present all religions in an equal manner, giving each of them the same level or lack of credibility or importance, the ERC relativizes religion thus removing room for the exclusive claims of religion on one's life and eliminating the potential for public disagreement which is the rationale for tolerance in a pluralist society. The ERC does not permit the very environment required for preparation "to live in a pluralist and democratic society", accepting of others and tolerant of beliefs and lifestyles with which one might disagree or disapprove.

2. Is Canada at risk of becoming a nation of intolerant children and young adults if such mandatory programs are not implemented in classrooms?

Canada has developed with a unique cultural and constitutional context. A heavily Protestant nation accommodated Catholic separate schools in its constitution when what are now public schools were Protestant schools available for attendance by any student.

Our strong heritage as a pluralist democracy grounded in Christian principles and practices has created a society of acceptance – and tolerance in disagreement – that is the envy of much of the world and has made a home for people with a variety of religious beliefs and expressions.

The goal of the ERC to develop “attitudes of tolerance, respect and openness” in order to prepare children “to live in a pluralist and democratic society” is betrayed by the very lack of tolerance, respect and openness to pluralism and democracy that is demonstrated in the ERC curriculum itself and by the Government of Quebec’s approach to mandatory instruction.

The Ministry of Education has not demonstrated why this course is needed to ensure a peaceful and tolerant society. Canada’s longstanding tradition of education from a Judaeo-Christian foundation has bred a vibrant, multicultural nation known for its acceptance of others and tolerance for differing opinions and religious beliefs.

To compel tolerance is to dispense with it. Every religion – including no religion – is, in essence, exclusive. Compelling tolerance by state-mandated compulsory religious and moral education can only be accomplished by violating the freedom of religion and conscience of each religiously devout individual.

For more information about religious freedom in the education setting and parental rights, please visit www.theEFC.ca/education.

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