

SUPREME COURT OF CANADA AGREES WITH QUEBEC CATHOLIC SCHOOL REGARDING RELIGIOUS FREEDOM

On March 19, 2015, the Supreme Court of Canada released its decision in *Loyola High School v. Quebec (Attorney General)*.¹ The case concerned an application by Loyola High School, a private Catholic school in Quebec (“Loyola”) for an exemption from the requirement to teach an Ethics, Religion and Culture course (the “ERC”). Loyola argued that the ERC course was incompatible with the school’s Catholic identity.

The Quebec Minister of Education, Recreation and Sport (the “Minister”) denied Loyola an exemption, and the Quebec Court of Appeal upheld the Minister’s decision. The Supreme Court of Canada overturned the Court of Appeal’s decision and ordered the Minister to reconsider the decision.

A seven-member panel heard the case at the Supreme Court.²

Justice Abella wrote for herself and Justices Lebel, Cromwell and Karakatsanis. Chief Justice McLachlin and Justice Moldaver wrote separate reasons that were concurred in by Justice Rothstein.

The Quebec Attorney General had argued that Loyola, being a corporation, did not have the right to freedom of religion under the *Canadian Charter of Rights and Freedoms* and that, accordingly, freedom of religion could not be invoked in this case. The Court unanimously disagreed.

Having dealt with that threshold issue, the Court held unanimously that there had been a substantial infringement of Loyola’s freedom of religion and that that infringement could not be justified. Both groups of judges concluded that Loyola, as a consequence of its constitutionally-protected freedom of religion, could not be forced to disengage from its Catholic mission and identity in the teaching of the Catholic faith and Catholic morals.

That said, all seven judges also ruled, in two slightly different ways, that other faiths and other ethical positions must be presented objectively and in a way that promotes respect and tolerance for those who adhere to those faiths and ethical views.

In the result, the majority group set aside the Minister’s decision and remitted that matter to him for reconsideration.

THE ETHICS, RELIGION AND CULTURE COURSE

The Quebec government had made the ERC a mandatory part of the secondary school curriculum in September, 2008. The Court described the course as “the most recent step in the process of the secularization of the [Quebec] school system”.³ The course covers world religions, with a primary focus on Protestantism and Catholicism. Its key objectives, as stated are: (1) the “recognition of others”, which is based on the principle that all people possess equal value and dignity; and (2) the “pursuit of the common good”, which seeks to foster shared values of human rights and democracy.

To accomplish these goals, the course purports to develop three primary competencies: (1) the ability to understand “religious culture”, which includes the study of world religions; (2) the ability to reflect

1. 2015 SCC 12. Borden Ladner Gervais LLP represented Loyola High School in this case.

2. Justice Wagner could not hear the case because he had been on the panel at the Court of Appeal. Furthermore, the appeal was heard on the next business day following the court’s decision declaring the appointment of Justice Nadon invalid.

3. Para. 10 of the decision.

on ethical questions; and (3) the ability to engage in dialogue. According to the Minister, the ERC is intended to be a course about religion as a cultural phenomenon, and is not intended to indoctrinate students into particular religious beliefs. The Minister mandated that the course be taught in public schools in a strictly secular and cultural way. In a previous case, the Supreme Court of Canada had found that the course did not infringe students' or parents' *Charter* rights when taught in the public school system.⁴

THE EXEMPTION

All schools in Quebec – public and private – are mandated to teach the same curriculum, including the ERC course. However, private schools can be exempted from teaching mandatory courses if the Minister finds that they offer an alternative but equivalent program with approved content.

Loyola applied for an exemption from the requirement to teach the ERC course in March 2008, before the course became mandatory. Loyola is a private Catholic secondary school in Montreal, founded by the Jesuits in the 1840s. It claimed the ERC course was incompatible with Loyola's Catholic mission and convictions, and proposed an alternative program that placed greater emphasis on Catholic values and beliefs. The proposed alternative course used the teachings of the Catholic Church as the basis upon which students learned about other religions, and would teach Catholic doctrine and ethics in great depth.

The Minister denied Loyola's request for an exemption. The Minister found that the Loyola course was not "equivalent" to the ERC course because it was faith-based, rather than cultural. The Minister also expressed concern that Loyola's proposed program did not adequately address

the "dialogue" component of the ERC (which was intended to help students develop the skills to interact respectfully with people of different beliefs) and did not require the teacher to teach the course from a neutral perspective.

THE JUDICIAL REVIEW

Loyola applied for judicial review of the Minister's decision. Loyola claimed that being mandated to teach the ERC course violated its freedom of religion because the "normative pluralism" that underpinned the ERC course was incompatible with Loyola's character as a Catholic institution. In other words, Loyola argued that a school cannot remain neutral as between different religious beliefs and still be Catholic.

The application judge agreed with Loyola and set aside the Minister's decision. The Quebec Court of Appeal unanimously overturned the application judge's decision. The Court of Appeal overturned the judge's decision and reinstated the Minister's denial of an exemption, finding that requiring Loyola to teach the ERC did not interfere with religious freedom in a substantial manner.

THE SUPREME COURT OF CANADA'S DECISION

The majority of the Supreme Court,⁵ allowed the appeal, set aside the Minister's decision, and returned the matter to the Minister for reconsideration. The Court held that the Minister's decision violated freedom of religion by effectively requiring Loyola to teach Catholic doctrine from a neutral perspective. However, the Supreme Court held that it would be reasonable to require Loyola to teach about other world religions from a neutral perspective like that mandated by the ERC course.

4. *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7.

5. Justice Abella wrote the majority decision on behalf of herself and Justices LeBel, Cromwell and Karakatsanis.

The Court found that the government’s objectives in the ERC course were legitimate, notably the objective that students in *all* schools be capable of conducting themselves in society with openness and respect for others. Furthermore, it was legitimate to consider the ERC objectives when determining whether a particular course was “equivalent” for the purpose of the exemption. However, the Court held the total denial of the exemption was a disproportionate infringement on the freedom of religion of the members of the Loyola community.

By requiring that all religions be taught objectively, the Minister effectively removed Loyola’s ability to perform the fundamental mission its community gave it – the transmission of Catholic doctrine and ethics. The Court held the Minister’s decision “prevent[ed] a Catholic discussion of Catholicism”.⁶ This was a disproportionate infringement on freedom of religion, because the countervailing impact on the public good was not as significant. As long as Loyola was permitted to operate as a private Catholic institution, its community had the freedom to use it to teach Catholic values from a Catholic perspective.

Finally, the Court agreed with the Court of Appeal that teaching ethics of other religions in a neutral, historical and cultural way would not entail a disproportionate interference with freedom of religion. The Court held that it was consistent with the *Charter* to learn about other religions in a neutral and respectful way.

The Court recognized this would create some tension when teaching Loyola’s proposed course. Consequently, the Court held the Minister should give Loyola some flexibility in implementation.

In the result, the Court set aside the Minister’s decision and remitted the matter to the Minister for reconsideration.

A minority of three judges of the Supreme Court⁷ held that the Minister’s denial of the exemption infringed Loyola’s freedom of religion, and that the school had a right to teach about all world religions from a Catholic perspective. The minority would have ordered the Minister to grant Loyola an exemption from the ERC.

CONCLUSION

This decision is a clear victory for private religious schools’ ability to teach *their* religion in accordance with its doctrine. However, the Supreme Court recognized the state’s right to require religious institutions to teach about other religions in a value-neutral way.

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6. Para. 64 of the decision.

7. Justice Moldaver, and Chief Justice McLaughlin wrote the minority decision on behalf of themselves and Justice Rothstein.

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