
FREEDOM OF RELIGION AND PARENTAL RIGHTS

*By Jennifer M. Leddy**

A. INTRODUCTION

On February 17, 2012 the Supreme Court of Canada released its Judgment¹ refusing the application of Catholic parents in Quebec to have their children in a public school exempted from taking the Ethics and Religious Culture course (“the ERC”) mandated by the Quebec Government for elementary and secondary students in the Province. While the parents were able to establish, from a subjective perspective, that their Catholic faith required them to educate their children in their faith, they were unable to establish, from an objective perspective, that the ERC actually interfered with that practice.

According to documents published by the Quebec Government, the stated purposes of the ERC are:

“The purposes of this program, instruction in ethics is aimed at developing an understanding of ethical questions that allows students to make judicious choices based on knowledge of the values and references present in society. The objective is not to propose or impose moral rules, nor to study philosophical doctrines and systems in an exhaustive manner.

Instruction in religious culture, for its part, is aimed at fostering an understanding of several religious traditions whose influence has been felt and is still felt in our society today. In this regard, emphasis will be placed on Québec’s religious heritage. The historical and cultural importance of Catholicism and Protestantism will be given particular prominence. The goal is neither to accompany students in a spiritual quest, nor to present the history of doctrines and religions, nor to promote some new common religious doctrine aimed at replacing specific beliefs.” (para. 34)

* Jennifer M. Leddy, B.A. LL.B., practices charity and not-for-profit law with the Ottawa office of Carters Professional Corporation.

¹ *S.L. and D.J. v Commission scolaire des Chênes and Attorney General of Quebec* 2012 SCC 7

The parents took the position that the ERC program is not neutral but promotes relativism by putting all religions on an equal footing, thereby causing confusion and interfering with the parents' ability and right to pass on their faith.

B. THE DECISION

The Court reaffirmed its decision in the *Amselem*² case that at the first stage of a religious freedom analysis it must be established that the applicant sincerely believes that a particular belief or practice, having a nexus with religion, is required to be followed irrespective of whether it is mandated by official teaching or religious authorities. It is not enough, however, to simply assert a sincere belief in a particular practice, the applicant must go further and in the second stage of the analysis provide objective evidence that the practice has in fact been infringed. The Court explained the interplay between the subjective and objective elements involved in the analysis of freedom of religion cases as follows:

“It follows that when considering an infringement of freedom of religion, the question is not whether the person sincerely believes that a religious practice or belief has been infringed, but whether a religious practice or belief exists that has been infringed. The subjective part of the analysis is limited to establishing that there is a sincere belief that has a nexus with religion, including the belief in an obligation to conform to a religious practice. As with any other right or freedom protected by the *Canadian Charter* and the *Quebec Charter*, proving the infringement requires an objective analysis of the rules, events or acts that interfere with the exercise of the freedom. To decide otherwise would allow persons to conclude themselves that their rights had been infringed and thus to supplant the courts in this role.” (para.24)

The Court easily accepted that the Catholic parents sincerely believed that they were required to hand on the faith to their children. However, the Court held that the parents had not established on the evidence presented that the course actually interfered with this practice. The Court was unable to conclude that exposing children to “a comprehensive presentation of various religions without forcing the children to join them,” indoctrinated the students or infringed the parents' freedom of religion. The Court also noted that it was a fact of life in Canadian society to encounter a variety of beliefs and that while it might be confusing and even cause friction, it did not prevent parents from passing on their beliefs to their children. In the Court's view:

² *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551.

“The suggestion that exposing children to a variety of religious facts in itself infringes their religious freedom or that of their parents amounts to a rejection of the multicultural reality of Canadian society and ignores the Quebec’s government’s obligations with regard to public education.” (para.40)

C. COMMENTARY

The case clarifies the two stage process required in religious freedom cases, the first stage is subjective and the second is objective. The applicant must first establish a sincere personal belief in a practice or doctrine and then prove on an objective basis that this practice or doctrine has been infringed. In some cases, the difference between the subjective and objective elements will be obvious. However, in others, the distinction between the two elements may be blurred so that one absorbs or dilutes the other.

It remains to be seen how the Court would treat a similar complaint by parents of children attending a private school or by the school itself.