

TOP FIVE 2015

Each year at OJEN's Toronto Summer Law Institute, a judge from the Court of Appeal for Ontario identifies five cases that are of significance in the educational setting. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

LOYOLA HIGH SCHOOL v QUEBEC (ATTORNEY GENERAL), 2014 SCC 37, [2014] 2 SCR 33.

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<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14703/index.do>

Facts

Since 2008, Quebec's Ministry of Education, Recreation, and Sports has required that all schools offer a program on Ethics and Religious Culture (ERC), which seeks to teach diversity and respect for others from a neutral and secular (i.e. non-religious) perspective. Loyola High School, a private Montreal Catholic high school for boys, applied for an exemption from this program pursuant to s. 22 of the *Regulation respecting the application of the Act respecting private education*. Section 22 allows the Minister of Education, Recreation, and Sports (the "Minister") to exempt a school where a proposed alternative program can be deemed "equivalent". The Minister denied the request on the basis that the proposed alternative would be taught entirely from the Catholic perspective and therefore was not "equivalent". Loyola brought an application for judicial review of the Minister's decision, arguing that it infringed their constitutional right to religious freedom under s. 2(a) of the *Charter of Rights and Freedoms*. In particular, Loyola argued that it was unreasonable to require that the school teach about Catholic perspectives on ethics from a neutral, non-Catholic perspective.

Canadian Charter of Rights and Freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion

Procedural History

The Superior Court quashed the decision of the Minister, upholding Loyola's right to teach the alternative course. This decision was reversed upon appeal to the Court of Appeal of Quebec (QCCA), and the Minister's original decision was reinstated. Loyola appealed the decision to the Supreme Court of Canada (SCC).

Issues

1. Can freedom of religion be extended to organizations and institutions, or does it apply only to individual persons?
2. Does requiring Loyola, a Catholic institution, to teach about Catholicism from a non-Catholic perspective infringe on the school's rights as outlined in s. 2(a) of the *Charter of Rights and Freedoms*?



3. Does the Minister's decision limit Loyola's freedom of religion more than is reasonably necessary in order to achieve the objective of the program?

Decision

The SCC granted Loyola's appeal, finding that mandating a purely secular course violated the school's freedom of religion.

Ratio

Where the objective of a particular statute is to promote tolerance and respect for difference, requiring a religious school to teach a program from a neutral perspective—including the teaching of its own religion—unreasonably limits freedom of religion under s. 2(a) of the *Charter*.

Reasons

The SCC affirmed that Loyola, as a religious organization, is entitled to the constitutional protection of freedom of religion. At issue was whether Loyola's freedom of religion under s. 2(a) had been infringed. The SCC modified the two-part test set out in *Amselem* and *Multani* to apply to an organization rather than an individual.

The modified test is as follows:

- (1) Is Loyola's claimed belief that it must teach ethics and its own religion from the Catholic perspective consistent with its organizational purpose and operation?

- (2) Does the Minister's decision to deny Loyola an exemption from the ERC Program interfere with Loyola's ability to act in accordance with this belief, in a manner that is more than trivial or insubstantial?

The Superior Court judge had previously found that Loyola's claim was credible. The Attorney General did not challenge this, so the SCC found no reason to deviate from the original finding of credibility with respect to the first point of the new test. On the second point, the SCC again affirmed the Superior Court judge's findings that the Minister's decision interferes with the freedom of religion guaranteed to Loyola.

Finally, the SCC in this case applied the rule in *Doré v. Barreau du Québec* for determining whether this administrative decision proportionately balances the relevant *Charter* guarantees with the objectives of the statute. This is similar to when a court applies the *Oakes* test under s. 1 of the *Charter* to determine whether legislation found to have infringed upon *Charter* rights can still be justified by balancing the interests and conduct of the government against the importance of the violation suffered. Here, the balance under review was between Loyola's s. 2(a) rights and the ERC's aims for "recognition of others" and "pursuit of the common good".

For the SCC, the balance in question tipped in Loyola's favour because the school would have been prevented from teaching

or discussing the core of its identity, Catholicism, from its own perspective. The Court found that this interference with s. 2(a) does nothing to further the important goals of the ERC program. The purely secular nature of the ERC Program is not necessarily or explicitly tied to its objective of promoting respect for religious diversity and care between members of different religious groups. So long as the religious perspective of the proposed alternative course does not prevent respectful discussion of other viewpoints or seek to promote one set of religious beliefs as correct, the alternative does not interfere with the objective of the course. In short, there is no reason why this Catholic school should be prevented from teaching about Catholicism from a Catholic perspective. Loyola can do so without compromising the purpose of the ERC.

DISCUSSION

1. What do you think the intended purpose of the ERC course is?
2. In your experience, is there enough done in Canada to promote appreciation for religious and cultural diversity?
3. Should a course like this be required to graduate from high school? Why or why not?
4. Does the SCC's decision to allow Loyola to teach about Catholicism from a Catholic perspective harm the diversity goals of the program?
5. Does being a member of one religious group mean that it will be impossible to discuss other religious traditions neutrally and respectfully?