

# TOP FIVE 2012

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.

## ***SL v COMMISSION SCOLAIRE DES CHÊNES, 2012 SCC 7***

Date Released: February 17, 2012

<http://scc.lexum.org/en/2012/2012scc7/2012scc7.html>

### **Facts**

In 2008, a mandatory Ethics and Religious Culture (ERC) program was introduced in Quebec elementary and secondary schools. The program replaced existing Catholic and Protestant religion programs and provides general instruction to students about ethics, morality and world religious traditions including Christianity, Hinduism, Islam and Judaism, among others.

That same year, two Catholic parents requested that their children's school board exempt their children from the ERC program on the grounds that the program infringed both their own and their children's right to freedom of conscience and religion. The parents argued that they had an obligation to pass on the tenets of their Catholic religion to their children. They argued that the ERC interfered with their ability to do so by confusing their children and causing disruption by exposing them to different religious ideas.

### ***Canadian Charter of Rights and Freedoms***

2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion.

Ultimately, the school board refused to exempt the children from the program. As a result, the parents sought a declaration from the Quebec Superior Court that the ERC program infringed their freedom of conscience and religion.

### **Procedural History**

The Superior Court held that the objective presentation of various religions to students does not infringe the parents' or student's freedom of conscience and religion. The decision was appealed and the Court of Appeal for Quebec upheld the Superior Court decision.

### **Issues**

Does compelling children to be exposed to religious diversity necessarily infringe upon freedom of conscience and religion?



## Decision

The Supreme Court of Canada (SCC) unanimously found that the claimants had failed to show that the mandatory program violated their freedom of religion or conscience.

## Ratio

The SCC considered whether the course infringed the right to freedom of conscience and religion under section 2(a) of the *Canadian Charter of Rights and Freedoms*. This decision clarifies what is required to establish a violation of the right to freedom of conscience and religion. To prove an infringement, the claimant must demonstrate, on the basis of objective proof, that s/he cannot actually practice his/her religion or exercise his/her beliefs. A claimant's mere belief that his/her religious practices or beliefs have been infringed is not sufficient to establish an infringement.

## Reasons

The SCC unanimously concluded that although exposure to a variety of religious facts can be a source of friction, exposing children to a variety of religious traditions does not in and of itself infringe the parents' or children's freedom of conscience and religion. The Court found that while the parents sincerely believed that they had an obligation to pass on the tenets of their faith to their children, they could not prove that the ERC interfered with or obstructed this practice.

In addition, two of the SCC judges held that the Superior Court erred in failing to consider content of the ERC program in assessing the program's impact on the parents' ability to fulfill their religious obligations. Nevertheless, these two concurred with their colleagues in finding that the parents had failed to prove that freedom of conscience and religion had been infringed, as the program material filed as exhibits for the case provided no insight into how the program would be implemented and taught. As a result, these two SCC judges left the door open to the possibility that the ECR program and the teaching methods used to implement it may in the future be found to infringe individuals' freedom of conscience and religion.

## DISCUSSION

1. What do you believe to be the purpose of the ERC course?
2. Does being exposed to a diversity of religious beliefs threaten one's own beliefs? Does it hinder people's ability to practice their religion?
3. What should be the role of schools in passing along public values? Should students at private schools be excluded from the ERC course?
4. Put yourself in the position of the parents in this case. Following this ruling, what could you do to ensure that your children were learning the tenets of your faith?
5. Courses are usually made compulsory when legislators believe they cover material that is basic, essential knowledge for participating in society. Working with a partner, think about compulsory courses you have taken: did they provide essential knowledge? Why or why not? Finally, make an argument for why a course that is NOT currently required should become mandatory.