SCC No. 35201

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

BETWEEN:

LOYOLA HIGH SCHOOL AND JOHN ZUCCHI

APPELLANTS
(Respondents)

and

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appelant)

and

CANADIAN COUNCIL OF CHRISTIAN CHARITIES, EVANGELICAL FELLOWSHIP OF CANADA, CHRISTIAN LEGAL FELLOWSHIP, WORLD SIKH ORGANIZATION OF CANADA, ASSOCIATION OF CHRISTIAN EDUCATORDS AND SCHOOLS CANADA, CANADIAN CIVIL LIBERTIES ASSOCIATION, CATHOLIC CIVIL RIGHTS LEAGES, ASSOCIATION DES PARENTS CATHOLIQUES DU QUÉBEC, FAITH AND FREEDOM ALLIANCE, ASSOCIATION DE LA COMMUNAUTÉ COPTE ORTHODOXE DU GRAND MONTRÉAL, FAITH FEALTY AND CREED SOCIETY, HOME SCHOOL LEGAL DEFENCE ASSOCIATION OF CANADA, SEVENTH-DAY ADVENTIST CHURCH OF CANADA, SEVENTH-DAY ADVENTIST CHURCH – QUÉBEC CONFERENCE, CORPORATION ACHIEPISCOPALE CATHOLIQUE ROMAINE DE MONTRÉAL AND L'ARCHEVÊQUE CATHOLIQUE ROMAIN DE MONTRÉAL

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PART I – STATEMENT OF FACTS

1) At issue in this appeal is a decision of the Québec Minister of Education ('the Minister') that effectively secularizes a religious educational institution, and profoundly interferes with the ability of religious parents to raise their children in their religious faith.

2) The classic definition of freedom of religion in Canadian constitutional law[1] maintains that freedom of religion includes "the right to manifest belief by worship and practice or by teaching and dissemination".

3) Just as religion has both communal and private aspects, the *Charter of Rights and Freedoms*' (the "*Charter*") guarantee of freedom of religion[2] extends not just to individuals but to religious groups as well. Teaching is one aspect of practicing one's religious faith protected by the *Charter*.

4) The Minister has refused to permit the Appellant Loyola High School ('Loyola') to continue to teach ethics and religion from a Catholic perspective. As Loyola is a Catholic school whose mission is to provide Catholic education[3], the Minister's refusal deprives Loyola of its "*raison d'être*", secularizing a religious institution by forcing it to abandon its mission to teach what it understands to be true in ethics and religion.

5) Appellant John Zucchi ('Zucchi') is a parent who is a practising Roman Catholic[4] and who enrolled his son at Loyola so that he would receive a Catholic education. Zucchi contends that his freedom of religion as a Catholic parent has been infringed by the decision of the Minister, because it interferes with his ability to pass on his faith to his son, which is his constitutionally protected right[5].

6) Both Appellants contend, therefore, (and this intervener agrees) that their fundamental rights to freedom of religion under section 2(a) of the *Charter* and section 3 of the *Quebec Charter*[6]

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[1] *R.* v. *Big M. Drug Mart*, [1985] 1 R.C.S. 295, p. 336; Appellants' Authorities, Vol. II Tab 32
[2] *Constitution Act*, 1985 R.S.C., App. 11, no. 44, art. 2 (a); Appellants' Factum, Part VII, p. 44
[3] Appellants' factum, paragraphs 8 and 9.
[4] Appellant's factum, paragraph 10; Appellants' Record, Vol. III, pp. 186-199.
[5] *S.L.* v. *Commission scolaire des Chênes*, [2012] 1 S.C.R. 235, paragraph 50, Appellants' Authorities, Vol.II,Tab 37; *B(R)* v. *Children's Aid Society of Metropolitain Toronto*, [1995] 1 S.C.R. 315, paragraph 105, Present Intervenor's Authorities, Tab 1.
[6] R.S.Q., c. C-12. Appellant's Authorities, Part VII, p. 44.

have been infringed by the Minister's decision. The Minister's decision, if allowed to stand, will set a precedent that will affect the collective and individual rights to religious freedom of all other religious schools, religious institutions, and religious parents in Québec and potentially, across Canada.

PART II – STATEMENT OF ISSUES

The issues dealt with in the following pages are:

A) Whether the decision of the Minister infringes the fundamental rights of Zucchi as a parent (and Loyola as a religious institution) to freedom of religion and conscience under s. 2(a) of the *Canadian Charter of Rights and Freedoms* and under s. 3 of the *Quebec Charter of Human Rights and Freedoms*.

B) Whether this Court should take guidance from international law in assessing the scope of freedom of religion.

PART III – ARGUMENT

A) Has the freedom of religion and conscience of the Appellants been infringed?

A.1) Background to the Ethics and Religious Culture Program

7) This Court has in previous judgments reviewed the social changes in Quebec over the last fifty years or so[7]. At the time of Confederation, religion (especially the Roman Catholic religion) played a central role in the lives of Quebecers. As a result, the *Constitution Act of 1867* guaranteed to Quebec residents the right to religious education[8].

8) Beginning in the 1960's, Quebec society became increasingly secularized. As part of this process, parts of s. 93 of the *Constitution Act of 1867*, which had guaranteed confessional schools to Quebec parents, were repealed. Likewise, article 41 of the *Quebec Charter of Human Rights and Freedoms*, (which had guaranteed to Quebec parents religious instruction in public schools in conformity with their convictions) was modified to provide that henceforth Quebec parents could themselves provide religious and moral education for their children in conformity with their convictions.

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[7] For example, in *S.L.* v. *Commission scolaire des Chênes*, supra, note 5, paragraphs 12 to 16 ; Appellants' Authorities, Vol. II, Tab 37.

[8] *Constitution Act*, 1867, 30 & 31 Victoria, c. 3 (U.K.) s. 93. Present Intervenors' Authorities, Tab 5.

9) Before these legislative changes, moral and religious education had been provided in Quebec through Catholic and Protestant school boards and schools. In the 2008-2009 school year, the Quebec Ministry of Education re-entered the field of religious and moral education with a program of study that it created called Ethics and Religious Culture ('ERC').

A.2) The purpose of the ERC Program

10) The ERC program, according to its architect Georges Leroux, is intended to break with the religious and moral education of the Catholic and Protestant churches, and replace it with the religious and moral teachings of the state. Referring to what he calls Quebec's "deconfessionalized society", Professor Leroux writes that

> Public schools will no longer be the setting for any confessionality whatsoever, and we must take the full measure of the break with the past. But this non-denominational space is nonetheless not destined to become empty, a space whose neutrality would require complete indifference to everything moral, spiritual and religious.[9]

11) And so, continues Professor Leroux, the ERC program

> does not intend to leave empty the place for the religious and the symbolic, but to fill it another way. It also assumes, as resolutely as possible, responsibility for the education of all young people to face the moral issues of these times.[10] (underlining added)

12) This is indeed a revolution. It will now be up to the state to determine the content and the method of religious and moral education in the schools, through the imposition of the ERC program, which all Quebec students must follow each year throughout their primary and secondary education. In his expert report, professor Douglas Farrow notes that

> the program is not intended merely to inform students about religion, but in the context of informing them about religion to help form and shape them both as human beings and as citizens.[11]

13) The ERC program, therefore, is intended not only to inform, but to shape the thinking and character of children.

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[9] LEROUX, Georges, "Ethics and Religious Culture", p. 5, quoted at p. 2 of expert report of Douglas Farrow, Appellants Record, Vol. V. Exhibit P-7, p. 41.
[10] *Ibid*, p. 2.
[11] *Ibid*, p. 4.

A.3) The Message of the ERC Program

14) The ERC program is based on the underlying philosophy of 'normative pluralism'. This is the term used by Professor Leroux himself:

> The first reason that we, the Government and all those who have supported it, judged that it is necessary, even essential, to draw up the course of ethics and religious culture, is normative pluralism. It is essential that diversified experience, both on the moral and the religious level, be valued in its diversity.[12] (underlining added)

15) One of the premises of normative pluralism is "a refusal to accept a single organizing idea or basic principle"[13]. There is therefore a tension between valuing diversity for its own sake, and valuing truth. For normative pluralism, the pursuit of truth must be subordinate to the celebration of diversity.

16) This subordination of the quest for truth to the celebration of diversity is visible in the ERC course. The greatest good, according to the ERC program, is multiplicity, or diversity. This fact is acknowledged by Professor Leroux in these words: "Our children will be better than us", because they will be "more open to religious and moral diversity and more committed to normative pluralism. They will believe that it is preferable to be plural (diverse) than homogeneous."[14]

17) Understanding differences in belief and accepting others despite those differences is of course a great good. The curriculum of Loyola already nurtured this understanding in its students[15]. However, what the ERC program imposes by force of law on all Quebec students, even those attending private religious schools, is the doctrine that all religions are equally incapable of being either true or false: that religious belief or unbelief is therefore a matter of great indifference. It undermines the ability of children to pursue the truth that is revealed in any religion.

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[12] *Ibid*, p. 4-5.
[13] *Ibid*, p. 5.
[14] *Ibid*, p. 6-7.
[15] Appellants' factum, paragraph 7.

18) The ERC course teaches that all religions are of equal value, and it requires that the instructor not favour one religion over another[16]. The quest for truth is discouraged, and in fact prohibited, when discussing religion.

19) Another necessary corollary coming out of the teaching of the ERC course is that religion is the fruit of human imagination on a par with philosophy and other systems of human thought. While some would argue that this is the correct perspective on religion, and that all citizens should adhere to this view, it cannot be denied that this normative pluralism is itself a particular perspective, world-view or ideology.

A.4) How the ERC Course Infringes Freedom of Religion

20) The purpose of the ERC course is not merely to inform[17]. Its purpose includes indoctrinating children into the ideology of normative pluralism.

21) The normative pluralism taught by the ERC course excludes the possibility of any final authority such as the Christian God.

22) For example, the introductory page of the ERC course states:

> The knowledge we will acquire and the discussions we will have during the school year may give you the impression that there is no ABSOLUTE RIGHT or WRONG, but rather that there is a relative right and wrong for each INDIVIDUAL and for each SOCIETY. It is sometimes upsetting to live in a world where no absolute TRUTH seems to exist.
>
> But don't worry. What is important is to know yourself better by acquiring reliable ethical judgment, and to live in peace with those around you.[18] (translation by the undersigned) (capital letters in original)

23) Having laid this foundation, the ERC course teaches that all religions, from Christianity (which claims there is one God) to Hinduism (which claims there are many gods) are equally valid, and it prohibits any attempt to determine the truth or falsity of the claims of the various religions[19].

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[16] Appellants' factum, paragraph 21 and 25. See also LÉVESQUE, Gérard. Expert Report, Appellants' Record, Vol. V, Exhibit P-6, p. 25. See also testimony of Mr. Lévesque, Appellants' Record, Vol. IV, pp. 92 ff.
[17] *Supra*, paragraph 13.
[18] Annex to report of expert Douglas Farrow, Appellants' Record, Vol. VI, Exhibit P-7, p. 63.
[19] *Supra*, note 16. See also LEVESQUE, Gérard, *supra*, note 16, at p. 5.

24) In so doing, as University of Victoria law professor Mary Ann Waldron points out[20], the ERC course teaches that all religions are untrue:

> Pluralistic views of religion that present all religious beliefs as having equal validity can do so only if they treat all religious belief as untrue. Since religions contradict one another over many points of belief, they cannot all be true; so if all are of equal worth, then they must all be untrue. If the ERC program, by design or otherwise, taught that the parents' and children's religion was untrue, it would seem incontrovertible that it violated their freedom of religion, not because it caused them offence but because a state institution was officially promoting the belief that their faith was false.[21]

25) The ERC course therefore contradicts and undermines the Catholic religion of the Appellants, (and indeed the religion of all orthodox Christians), as expert witness Gérard Lévesque pointed out:

> La très grave erreur qui est à la base de ce programme d'éthique et de culture religieuse (...) consiste à envisager la religion comme un pur phénomène aux multiples manifestations : ce qui revient à nier à la religion voulue par Dieu son caractère surnaturel. On n'étudie plus alors la religion par rapport à ce que Dieu lui-même en a révélé et donc selon la seule révélation divine authentique contenue dans l'Ancien et le Nouveau Testament.
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> (The very serious error underlying this ethics and religious culture course (...) consists in viewing religion simply as a phenomenon with many manifestations: which therefore denies the supernatural character of the religion God has ordained. No longer is religion studied as that which God has revealed, and therefore as the only true revelation, contained in the Old and New Testaments.)[22]

26) The Respondent argues that this interference with the Appellants' ability to teach what they understand to be the truth in religion and ethics is trivial and insubstantial[23]. Here, the Respondent displays an incomprehension of the value of the search for truth and an intolerance towards the notion that truth actually exists. This is an attitude that is hostile to the holding of this Court in *R.* v. *Big M. Drug Mart Ltd*[24], that the essence of freedom of

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[20] WALDRON, Mary Ann, *Free to Believe, Rethinking Freedom of Conscience and Religion in Canada* (Toronto: University of Toronto Press, 2013) p. 162. Present Intervener's Authorities, Tab 4.
[21] *Ibid*, p. 162.
[22] Quoted in expert report of Gérard Lévesque, p. 28, Appellants' Record, Vol. V, Exhibit P-6, p. 207 (translated by the undersigned).
[23] Respondent's factum, paragraph 131 and following. At paragraph 32 of *Alberta* v. *Hutterian Brethren*, [2009] 2 S.C.R. 567, this Court defines trivial or insubstantial interference as "[...] interference that does not threaten actual religious belief or conduct." Appellants' Authorities, Vol. I, Tab 2.
[24] *R* v. *Big M Drug Mart Ltd*, *op. cit.* note 1, pp. 346 and 351; Appellants' Authorities, Vol. II, Tab. 32.

religion is the search for truth, and the right to adhere to a particular religion (or to refuse to adhere to it) on the basis of what one determines to be the truth.

27) It is because of his convictions as to the truths revealed in his religious faith that Zucchi (and most other religious believers who are parents) seek to pass on their understanding of their religious faith to their children through teaching. This is an essential component of freedom of religion[25].

28) The Respondent argues that the Minister is not attempting to impose an ideology on Quebec students[26]. This is not true. The Minister is convinced that her view of religion and ethics – a secular, agnostic view – is preferable to that of the Appellants. That is the message of the ERC course[27] which the Minister is imposing on Québec students throughout their primary and secondary education, and which the Minister seeks to impose on the Appellants.

29) One of the ways Zucchi has exercised his freedom of religion as a parent is to enroll his son in a Catholic school. As this Court ruled in *Caldwell* v. *Stuart*[28], the religious calling of a religious school such as Loyola colours every aspect of the School, including the example to be set by its teachers.

30) In the present case, the Minister wishes to contradict Catholic teaching in a much more egregious fashion than did the plaintiff in *Caldwell* v. *Stuart*. The Minister seeks to oblige a Catholic school (chosen by the parents) to teach its religion in a manner that contradicts basic Catholic doctrine, and that undermines the student's capacity to ever be able to embrace that doctrine as true. This is a clear violation of the Appellants' freedom of religion, and potentially, of all religious parents who choose to enroll their children in religious based schools.

31) Although the subject of this case is an administrative decision, that does not relieve the Minister of her obligation to properly balance the *Charter* values in question (the freedom of religion of Appellants) with the statutory objectives of the law[29]. As the factum of the

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[25] *Supra,* note 5.
[26] Respondent's factum, paragraph 35.
[27] This is acknowledged at paragraph 91 of the Respondent's factum: "La nature non confessionnelle est au cœur même du programme [...]" (The non-confessional nature is at the heart of the [ERC] program [...]) (translation by the undersigned).
[28] [1984] 2 S.C.R. 603. Appellants' Authorities, Vol. I, Tab 7.
[29] *Doré* c. *Barreau du Québec*, [2012] 1 S.C.R. 395, paragraphs 55-58 (Appellants' Authorities, Vol. I, Tab 16).

Appellants points out, this the Minister has completely failed to do[30]. Since the Minister has completely failed to consider the Appellants' religious freedom, there has been no balancing as required by this Court in *Doré,* and the Minister's decision is patently unreasonable.

B) The Freedom of religion of parents: guidance from international law

32) Zucchi is a sincere Roman Catholic Christian who desires to pass on his religious faith to his son[31]. To this end, he has chosen to enrol his son in Loyola High School, a Catholic institution. This choice is as much an exercise of his freedom of religion as his choice of which church to attend.

33) In fact, the right of believing parents to ensure the religious and moral education of their children in conformity with their own convictions is specifically and repeatedly affirmed in international covenants which Canada has ratified.

34) For example, the *International Covenant on Civil and Political Rights*[32] states at article 18(4):

> The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.[33]

35) International law therefore recognizes that the freedom of religion of parents includes their right to influence the religious beliefs of their children by means of religious and moral education which they have chosen.

36) In *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, this Court quoted with approval and applied (at paragraph 70) the following statement:

> [T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as

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[30] Appellants' factum, paragraph 90.
[31] *Supra*, paragraph 5.
[32] (December 16, 1966) 999 U.N.T.S. 171, art. 18, GA Res. 2200A (XXI), 21 UN GAOR, Supp. No. 15, UN Doc., Present Intervener's Authorities, Tab 8.
[33] This text is restated at article 13(3) in the *International Covenant on Economic, Social and Cultural Rights*, (December 16, 1966) GA Res. 2200A (XXI), Present Intervener's Authorities, Tab 8; and in article 5(1) and (2) of the United Nations *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, (GA Res. 36/55, November 25, 1981). Present Intervener's Authorities, Tab 6.

> possible, therefore, interpretations that reflect these values and principles are preferred.[34]

37) More recently, in *Health Services and Support Facilities Subsector Bargaining Ass'n* v. *British Columbia*, (2007) SCC 27[35], this Court invoked international law as an interpretative aid for *Charter* guarantees (in that case, freedom of association). In doing so, Chief Justice McLachlin referred with approval to Dickson C.J.'s dissenting statement from the *Reference Re Public Service Employee Relations Act (Alta.)* in 1987:

> I believe that the Charter should generally presume to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.[36]

38) At paragraph 149 and following of its factum, Respondent makes the point that, according to the *Convention Respecting the Rights of the Child*, and other authorities, the State needs to assure that the education of children will prepare them to assume the responsibilities of life in a free society, in a spirit of understanding, peace, tolerance, equality, and friendship among various ethnic, national and religious groups. What Respondent fails to mention is that there is no evidence before this Court that such an objective will not be achieved if the ERC course is taught from a Catholic perspective, as Appellant Loyola proposes to.

39) At paragraph 151 of Respondent's factum, reference is made to several decisions of the European Court of Human Rights, which, according to Respondent, have endorsed the use of courses similar to the ERC course in various European countries. What Respondent fails to mention is that in all of these decisions, the course in question was being taught in public schools, not private religious schools, as in the present case.

40) At paragraph 153 of Respondent's factum, reference is made to a document entitled "Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools". Excerpts of this document are reproduced as Respondent's Exhibit PGQ-41[37]. Once again, as its title indicates, this document addresses primarily the teaching of religion in public schools.

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[34] SULLIVAN, R., *Driedger on The Construction of Statutes*, 3rd edition (1994) p. 330. Present Intervener's Authorities. Tab 3.
[35] (2007) SCC 27, Appellants' Authorities, Vol. I, Tab 19.
[36] [1987] 1 S.C.R. 313, p. 349. Present Intervener's Authorities, Tab 2.
[37] Respondent's file, Vol. IX, p. 117 and following.

Respondent draws attention to page 20 of that document[37], where reference is made to private schools, but fails to mention that this page states that "[…] in the case of private schools […] religious autonomy rights should be respected."[38]

41) It is submitted, therefore, in the light of the jurisprudence above cited, that this Court should indeed use and apply the above quoted international documents in the interpretation of the Appellants' fundamental rights, and should conclude that the Appellants' freedom of religion and conscience under article 3 of the Quebec Charter and under article 2(a) of the Canadian Charter has been unjustifiably infringed, for the reasons stated in paragraphs 20 to 31 above.

PART IV – COSTS

42) This Intervener does not seek costs and asks that no costs be ordered against it.

PART V – ORDER SOUGHT

43) This Intervener respectfully requests permission from this Court to make oral arguments at the hearing of this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10th day of March 2014.

ROBERT E. REYNOLDS
COUNSEL FOR INTERVENER CHRISTIAN LEGAL FELLOWSHIP

[37] *Ibid*, p. 140.
[38] *Ibid*, p. 140.

PART VI – TABLE OF AUTHORITIES

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Health Services and Support Facilities Subsector Bargaining Ass'n v. *British Columbia*, (2007) SCC 27 37

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Reference Re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313 37

S.L. v. *Commission scolaire des Chênes*, [2012] 1 S.C.R. 235 ..... 5, 7, 27

LEGISLATIVE PROVISIONS

Charter of Human Rights and Freedoms, R.S.Q., c. C-12 ..... 6, 8

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International Covenant on Civil and Political Rights, (December 16, 1966) 999 U.N.T.S. 171, art. 18, GA Res. 2200A (XXI), 21 UN GAOR, Supp. No. 15, UN Doc. 34

International Covenant on Economic, Social and Cultural Rights, (December 16, 1966) GA Res. 2200A (XXI) 34

SCHOLARLY LITERATURE

Mary Ann Waldron, *Free to Believe, Rethinking Freedom of Conscience and Religion in Canada* (Toronto: University of Toronto Press, 2013) 24

R. Sullivan, *Driedger on The Construction of Statutes*, 3rd edition (1994) 36

***Constitution Act*, 1867, 30 & 31 Victoria, c. 3 (U.K.)**

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec;

(3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education;

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

93A. Paragraphs (1) to (4) of section 93 do not apply to Quebec.

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

International Covenant on Economic, Social and Cultural Rights

Article 13

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

***Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, (GA Res. 36/55, November 25, 1981)**

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

Court File Number: 35201

LOYOLA HIGH SCHOOL and JOHN ZUCCHI **and** **ATTORNEY GENERAL OF QUEBEC**

Appellants Respondent

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE QUEBEC COURT OF APPEAL)

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