

Catholic Dimension - Legally Speaking - Spring 2015

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Loyola High School and Religious Collective Rights in a Secular State

1. Introduction

Loyola High School, a private English-speaking Catholic high school for boys established in 1848 by the Jesuit Fathers, brought a judicial review application against the decision of the Quebec Minister of Education, Recreation and Sports refusing its request for an exemption from the province's strictly secular Ethics and Religious Culture Program ("ERC") in favour of teaching a Catholic-permeated religion program which it said was "equivalent" to the objectives of the ERC.

In its ground-breaking decision of March 19, 2015, the Supreme Court of Canada held that refusing an exemption to Loyola breached the guarantee of freedom of religion pursuant to section 2(a) of the Canadian Charter of Rights and Freedoms, and the equivalent section 3 of the Quebec Charter, and was not saved by section 1 of the Charter as justifiable in a free and democratic society.

2. Religious Freedom in a Secular State

The Majority and Concurring Decisions of the Court agreed on the law with respect to the fundamental right to religious freedom in a secular society.

The Majority Decision said:

"Part of secularism ... is respect for religious differences. A secular state does not – and cannot – interfere with the beliefs or practices of a religious group unless they conflict with or harm overriding public interests. Nor can a secular state support or prefer the practices of one group over those of another The pursuit of secular values means respecting the right to hold and manifest different religious beliefs. A secular state respects religious differences, it does not seek to extinguish them" (para. 43).

The decision further indicated that the state is required to affirm and recognize the religious freedom of individuals and their communities, and support religious pluralism (paras. 44 & 45). This does not mean that religious differences trump core national values. There may be some religious values that are not "compatible with Canada's fundamental values" ... "especially basic human rights, the equality of all citizens before the law, and popular sovereignty" (para. 46). As a result:

"Religious freedom must therefore be understood in the context of a secular, multicultural and democratic society with a strong interest in protecting dignity and diversity, promoting equality and ensuring the vitality of a common belief in human rights" (para. 47).

The Majority Decision emphasised that the right to religious freedom includes the right "that parents have ... to choose establishments that, according to their own convictions, best respect the rights of their children" including to a denominational education (para. 54).

The Court adopted its reasoning in *Big M Drug Mart*, [1985] 1 S.C.C. 295 with respect to freedom of religion:

“The essence of the concept of freedom of religion is the right to entertain such beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

...

The Charter safeguards religious minorities from the threat of ‘the tyranny of the majority’.” (para. 58)

The Concurring Decision emphasised that the state must encourage “principles of interfaith cooperation and collaboration, which brings together people with deeply held commitments to their own faiths ... but who are nonetheless able to foster deep ties based on sincere mutual respect” (para. 161).

3. Religious Freedom Includes Collective Rights

The Majority and Concurring Decisions of the Court also agreed that religious rights are to be respected both individually and collectively.

Relying upon the decision in *Big M Drug Mart*, the Court held that religious freedom “includes both the individual and collective aspects of religious belief (para. 58 & 97), and quoting from *Hutterian Brethren of Wilson Colony*, 2009 SCC 37 affirmed: “Religion is about religious beliefs, but also about religious relationships” (para. 59 & 93). The Court affirmed its decision in *Syndicat Northcrest v. Amselem*, 2004 SCC 47 that freedom of religion “has both an individual and collective dimension”:

‘Religions are necessarily collective endeavors ... it follows that any genuine freedom of religion must protect, not only individual belief, but the institutions and practices that permit the collective development and expression of that belief’ (para. 92).

The Court held that the individual and collective aspects of freedom of religion are “indissolubly intertwined”, freedom of religion for individuals cannot flourish “without freedom of religion for the organizations through which those individuals express their religious practices and through which they transmit their faith” (para. 94).

The Majority Decision said that “religious freedom under the Charter must therefore account for the socially imbedded nature of religious belief, and the deep linkages between this belief and its manifestation through communal institutions and traditions” (para. 60) and that “these collective aspects of religious freedom – in this case, the collective manifestation and transmission of Catholic beliefs through a private denominational school” are crucial to “the collective practice of Catholicism and the transmission of the Catholic faith” (para. 61).

The Court held that “to tell a Catholic school how to explain its faith undermines the liberty of the members of its community who have chosen to give effect to the collective dimension of their religious beliefs by participating in a denominational school” (para. 62), “it amounts to requiring a Catholic institution to speak about Catholicism in terms defined by the state rather than by its own understanding of Catholicism” (para. 63), and “it also interferes with the rights of parents to transmit the Catholic faith to their children” and the “rights of parents to guide their children’s religious upbringing” (para. 64 & 65).

With respect to the communal aspect of a denominational school, the Court concluded: “Ultimately, measures which undermined the character of lawful religious institutions and disrupt the vitality of religious communities represent a profound interference with religious freedom” (para. 67).

In conclusion, the Court held that freedom of religion under section 2(a) of the Charter “is not limited to religious belief, worship and practice of religious customs. Rather, it extends to conduct more readily characterized as the propagation of, rather than the practice of, religion” including “the right to manifest religious belief ... by teaching and dissemination” (para. 132).

4. Findings

The Court, in both the Majority and Concurring Decisions, agreed that the decision of the Quebec Minister not to grant an exemption to Loyola for its religious studies programming infringed Loyola’s, or its collective teacher’s, parent’s and student’s rights to religious freedom pursuant to section 2(a) of the Charter, and was not justified pursuant to section 1 of the Charter.

In attempting to achieve a balance between the objectives of promoting the goals of the ERC and the religious freedom of the members of the Loyola community, the Court held that the Minister’s decision was unreasonable (paras. 69, 79 & 143): “The Minister’s denial of an exemption from the ERC program-which has the effect of requiring Loyola to teach its entire ethics and religion program from a neutral, secular perspective infringes Loyola’s freedom of religion in violation of s. 2(a) of the Charter” (para. 145). In addition, the Court found that the Minister’s decision did not meet the proportionality test as it did not minimally infringe the claim to religious rights (paras. 88 & 151):

“Loyola is placed in an untenable position because of the Minister’s decision. Either Loyola dispenses the ERC course according to the Minister’s program and violates the supreme principles governing its freedom of religion, or it teaches the subject with its Catholic program and violates the Act” (para. 149).