

**Religious freedom and education in Quebec:  
Challenges and perspectives**

**THESIS**

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## Table of Contents

<b>ABSTRACT .....</b>	<b>2</b>
<b>PART ONE – RELIGION AND LAW IN CANADA .....</b>	<b>3</b>
INTRODUCTION .....	3
<i>The Emergence of Religious Studies in Academia</i> .....	4
<i>Defining Religious Studies</i> .....	6
<i>Approaches to Religious Studies Methodology</i> .....	9
<i>Thesis Overview and Methodology</i> .....	10
A PORTRAIT OF CANADA’S RELIGIOUS DIVERSITY .....	11
<i>The Evolution of Religiosity in Canada</i> .....	16
<i>A Snapshot of Religion in Quebec</i> .....	19
LEGAL DEFINITIONS OF RELIGION .....	21
FREEDOM OF CONSCIENCE AND RELIGION UNDER THE CANADIAN CHARTER .....	25
STATE NEUTRALITY .....	30
<i>Mouvement Laïque Québécois v. Saguenay (City)</i> .....	34
QUEBEC’S SECULARIZATION, LAÏCITÉ AND EDUCATION .....	40
THE ERC PROGRAM .....	43
<b>PART TWO – RELIGIOUS EDUCATION: LEGAL CHALLENGES AND ISSUES .....</b>	<b>45</b>
<i>S.L. v. COMMISSION SCOLAIRE DES CHÊNES</i> .....	46
THE CASE OF LOYOLA HIGH SCHOOL .....	49
CASES FROM ROC .....	54
<i>Zylberberg and the CCLA Case</i> .....	54
<i>The Chamberlain Case</i> .....	60
<i>The Hamilton-Wentworth Case</i> .....	61
<i>The Servatius Case</i> .....	62
<b>PART THREE – THE FUTURE OF RELIGIOUS EDUCATION IN QUEBEC .....</b>	<b>67</b>
INTERNATIONAL STANDARDS AND GUIDELINES .....	67
THE TOLEDO GUIDING PRINCIPLES .....	69
<i>Purpose</i> .....	70
<i>Founding Principles</i> .....	72
<i>Pedagogical Approaches</i> .....	73
<i>Curricula</i> .....	73
<i>Learning Outcomes</i> .....	74
<i>Teachers</i> .....	75
<i>Concluding Guiding Principles</i> .....	76
SCHOLARLY COMMENTARY ON THE TOLEDO GUIDING PRINCIPLES .....	78
THE IMPORTANCE OF NON-RELIGION IN EDUCATION ABOUT RELIGION .....	83
THE FUTURE OF RELIGIOUS EDUCATION IN QUEBEC, OR THE LACK THEREOF .....	85
PROPOSED WAY FORWARD: A “MINI-SCIENCE-OF-RELIGION” .....	92
<b>CONCLUSION .....</b>	<b>97</b>
<b>BIBLIOGRAPHY .....</b>	<b>104</b>

## ABSTRACT

The results of the “ethnocultural and religious diversity” portion of the 2021 Canadian Census have revealed a major shift in the Canadian religious landscape, showing a decline in Christian affiliation, increased diversity among the minority religions, and a drastic increase in the fastest-rising category, non-religion. In this age of religious pluralism, the balance between students’ religious freedom and the societal requirement for learning about the multiplicity of religions represented in our classrooms is ever-more delicate. In this paper, we will explore the major constitutional challenges that have been brought in the area of religious education in Quebec with regard to the Ethics and Religious Culture program, whilst drawing comparisons with religious education challenges in other Canadian provinces. Furthermore, on the eve of a religious education revamp in Quebec, this paper seeks to propose a way forward for teaching about religion, drawing inspiration from international guidelines and academic theory, all the while recognizing the important place of non-religion in any modern religious education program.

*Les résultats du Recensement de 2021 sur la diversité ethnoculturelle et religieuse au Canada ont révélé un changement majeur au paysage religieux canadien, démontrant le déclin de l’affiliation chrétienne, une diversité accrue parmi les religions minoritaires et une augmentation drastique de la catégorie qui s’accroît le plus rapidement, la non-religion. En cette ère de pluralisme religieux, l’équilibre entre la liberté religieuse des élèves et l’exigence sociétale d’enseignement sur la multiplicité des religions représentées dans nos salles de classe est de plus en plus délicat. Dans cet article, nous explorons les principales contestations constitutionnelles du programme ministériel québécois d’Éthique et culture religieuse, tout en établissant des comparaisons avec certaines contestations relatives à l’enseignement religieux dans d’autres provinces canadiennes. De plus, à la veille d’une refonte du programme d’enseignement religieux au Québec, cet article cherche à proposer une voie à suivre pour l’enseignement de la religion, en s’inspirant des lignes directrices internationales et de la théorie académique, tout en reconnaissant la place importante de la non-religion dans tout programme moderne d’enseignement religieux.*

## PART ONE – Religion and Law in Canada

### Introduction

The massive power religion has wielded around the world and throughout history is undeniable. John R. Hinnells, Professor of Comparative Religions and editor of the *Routledge Companion to the Study of Religion*, questions whether one can even “understand any culture and history – political or social – without understanding the relevant religions.”<sup>1</sup> While maintaining that there is “no single argument for why and how one studies religions”<sup>2</sup> and revealing his own non-religious belief, Hinnells begins his work with the following basic question: “why should an atheist want to study religions?”<sup>3</sup> As an atheist who decided to pursue a graduate degree in religious studies, I can relate to Hinnells’ proposition; as an advocate for general education about religions in Quebec’s public schools, I am invested in echoing his answer.

Hinnells explains that one of his major motives for pursuing the comparative study of religions was “to encourage knowledge and understanding between religions and cultures, based on the assumption that prejudice will be overcome if each knows more about the other.”<sup>4</sup> He points out the often stereotypical images of “the other” portrayed in media and society and expresses hope that knowledge will result in understanding, and thereby better relations between peoples.<sup>5</sup> “Whether one is religious or not, the study of religion is a key to understanding other cultures”<sup>6</sup>

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<sup>1</sup> John R. Hinnells, “Why Study Religions?” in John R. Hinnells, ed, *The Routledge Companion to the Study of Religion* 2nd ed (Abingdon, UK: Routledge, 2010) 5 at 6.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid* at 9.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid* at 18.

and, in an increasingly multicultural and religiously pluralistic society, critical to understanding one another.

### The Emergence of Religious Studies in Academia

On the one hand, it can be said that the study of religion is as old as religion itself.<sup>7</sup> On the other hand, in most parts of the world, the study of religion in a narrower, more technical and academic sense, as the non-theological study of religion in the context of higher education, didn't gain traction until after the Second World War.<sup>8</sup> "The development of the study of religion was largely a shift in emphasis from examining the world through a lens shaped by religious conviction to examining it through one shaped by perspectival pluralism, religious uncertainty, or anti-religious naturalism, usually an uneven mixture of all three."<sup>9</sup> Some have advocated for the study of religion as a discipline, defined by a particular method; however, in practice, it has been "an undisciplined, polymethodic field largely planted with seeds from elsewhere,"<sup>10</sup> of which the most important sources have been anthropology, literary studies, cultural studies, and recently, the social sciences.<sup>11</sup>

The notion of "religious studies" as a discipline is largely disputed when it comes to pinpointing a unanimous meaning among those who study religions in modern Western universities.<sup>12</sup> There is, however, "vast literature committed to providing an understanding of the nature and value of the

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<sup>7</sup> Gregory Alles, "The Study of Religions: the last 50 years" in John R. Hinnells, ed, *The Routledge Companion to the Study of Religion* 2nd ed (Abingdon, UK: Routledge, 2010) 39 at 39.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid* at 44.

<sup>11</sup> *Ibid.*

<sup>12</sup> Donald Wiebe, "Religious Studies" in John R. Hinnells, ed, *The Routledge Companion to the Study of Religion* 2nd ed (Abingdon, UK: Routledge, 2010) 125 at 125.

enterprise”<sup>13</sup> despite the lack of agreement “among those who have put their hand to the task.”<sup>14</sup> One thing is clear: “religious studies” appears to be the designation of choice for the academic study of religion in the college and university setting.<sup>15</sup> “There is, perhaps, equal agreement that this designation for the study of religion, ‘legitimated’ by virtue of inclusion in the curriculum of the university, came into use only after the Second World War, primarily since the 1960s.”<sup>16</sup>

As an illustration of this phenomenon, McGill University’s Faculty of Religious Studies was only renamed as such in 1970 “in order to reflect the new emphasis on the academic study of religion.”<sup>17</sup> It was previously – since 1948 – the Faculty of Divinity, which mainly taught theological courses for ordinands.<sup>18</sup> In the late 1960s, at the height of Quebec’s Quiet Revolution and amid “changing pattern[s] of enrollment”, a sub-committee was formed to make recommendations about the future of the Faculty of Divinity.<sup>19</sup> At a meeting of the sub-committee on February 13<sup>th</sup>, 1967, it was proposed that the Faculty should redesign its curricula, adopting an “unbiased, uncommitted stance,” and that “Divinity staff should express their own sense of commitment in their extracurricular activities, not in the classroom.”<sup>20</sup>

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> School of Religious Studies, *History*, online: McGill University <<https://www.mcgill.ca/religiousstudies/about/history>>. In May 2016, the Faculty of Religious Studies was repositioned as the School of Religious Studies within the Faculty of Arts.

<sup>18</sup> *Ibid.*

<sup>19</sup> H. Keith Markell, *The Faculty of Religious Studies McGill University 1948-1978* (Montreal: McGill University, 1979) at 46.

<sup>20</sup> *Ibid* at 47.

## Defining Religious Studies

While there is no universal definition of “religious studies”, most authors will agree on a number of characteristics: it is seen as a relatively new, multi-disciplinary field dedicated to the academic study of religion, as contrasted with the faith-based approach taken in theology.

According to Thomas Benson, as defined in his essay *Religious Studies as an Academic Discipline*, religious studies is “a scholarly or academic undertaking aimed at fostering critical understanding of religious traditions and values as opposed to a religious exercise designed to nurture faith. It is therefore a new enterprise, distinct from an earlier style or ‘faith-based’ study of religion in the university that is usually referred to as ‘theology.’”<sup>21</sup>

Harold Remus, in the *Encyclopedia of the American Religious Experience*, explains that “the development of new academic disciplines, such as sociology, anthropology, and psychology, applied to the study of religion at the end of the 19th century, led eventually to the development of an academic field designated *religion* or *religious studies* that was dedicated in principle to the academic study of religion.”<sup>22</sup> For Remus, “religious studies cannot involve instruction *in* religion but can nevertheless teach *about* religion.”<sup>23</sup> This distinction between religious studies and theology is also insisted upon by Alan Olson in the *Encyclopedia of Religious Education*, where he writes that “religious studies is meant to identify an objective, scientific, non-biased study of religion” as opposed to the theological or confessional study of religion for the purpose of increasing faith, understanding and commitment towards a particular religion.<sup>24</sup>

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<sup>21</sup> Wiebe, *supra* note 12 at 126.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

Ninian Smart's essay *Religious Studies in Higher Education* echoes Olson, maintaining that religious studies "as a new multidisciplinary subject incorporating history of religions, cross-cultural topics, social-scientific approaches and ethical and philosophical reflections... came to prominence chiefly in the 1960s and early 1970s"<sup>25</sup> and has since "begun to play a vital role in the humanities, both because of its cross-cultural commitments and because of its serious consideration of diversity of human world-views."<sup>26</sup>

Benson highlights the challenges in recognizing religious studies as a discipline as it does not have a method peculiar to itself, and concludes that religious studies are, perhaps, "best understood as a community of disciplines gathered around the complex phenomenon of religious belief and practice."<sup>27</sup>

Following an in-depth analysis of the literature surrounding the notion of religious studies, Donald Wiebe, Professor of Philosophy of Religion at the University of Toronto, concludes that the term "religious studies" is used in "two quite different yet not wholly unconnected ways."<sup>28</sup> In one sense, the term includes "whatever study of religion and religions is undertaken in any post-secondary institution of education, whether religious or secular, and regardless of the methodology adopted."<sup>29</sup> The second, more common use of the term – and the one subscribed to in this thesis – is "a designation for a particular kind of approach to the study of religion with a particular aim,

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<sup>25</sup> *Ibid* at 127.

<sup>26</sup> *Ibid* at 129.

<sup>27</sup> *Ibid* at 127.

<sup>28</sup> *Ibid* at 139.

<sup>29</sup> *Ibid*.



methodology, or style that distinguishes it from the type of (religious/confessional) study of religion antedating it.”<sup>30</sup> When used in this sense, “it still refers to the study of religion undertaken in the academy, but now designates an enterprise legitimated by the academy – in this case the modern research university – because it measures up to the received criteria of scientific study in the other university disciplines.”<sup>31</sup> Wiebe concludes that “religious studies, as an academic undertaking, therefore, ought to connote a scientific enterprise even though it does not, as some would argue, constitute a scientific discipline.”<sup>32</sup>

Wiebe explains “enterprise” in this context to mean “any organized understanding of sufficient magnitude and duration to permit its participants to derive a measure of identity from it.”<sup>33</sup> Qualified as “scientific”, the enterprise described by Wiebe is “chiefly characterized by an epistemic intention, taking for granted that the natural and social sciences are the only legitimate models for the objective study of religion; but it does not itself constitute a distinct scientific discipline.”<sup>34</sup>

Religious studies as a scientific enterprise is a naturalistic study of religion carried out in several complementary disciplines, within a field that is polymethodic and multidisciplinary.<sup>35</sup> “Religious studies, in this view, therefore, is not a separate discipline but instead a general rubric for empirical and scientific studies of religion which alone are appropriate in the context of a modern research

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid* at 140.

university dedicated to the advancement of objective knowledge about the world, both natural (physical) and social.”<sup>36</sup>

#### Approaches to Religious Studies Methodology

As someone who is trained in the Canadian civil and common laws and interested in conducting research on the intersection of law and religion, the question of methodology arises with its share of challenges. While there is plenty of literature on the different methods and theories for researchers working in the social sciences, there is very little guidance for those who want to conduct research on the law and legal institutions from different social scientific perspectives<sup>37</sup> – including religious studies. Many socio-legal researchers in fact argue that no special method is required for socio-legal research other than those that already exist within the social sciences.<sup>38</sup> Some might also argue that a prescribed method may limit creativity and therefore the lack of such standards of investigation allows for a more interdisciplinary approach which promotes theoretical diversity and innovation.<sup>39</sup> At the same time, this may also be indicative of the lack of interest among socio-legal researchers in engaging with social scientific debates about methodology.<sup>40</sup> Furthermore, there is little consensus as to whether socio-legal studies are an emerging field, a sub-discipline, or a methodological approach in itself.<sup>41</sup> In order to clarify the status and approach of socio-legal studies, it is useful to compare it to sociology of law.<sup>42</sup> Sociology of law “receives its intellectual impetus mainly from mainstream sociology and aims to transcend the lawyer’s

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<sup>36</sup> *Ibid.*

<sup>37</sup> Reza Banakar & Max Travers, “Introduction” in Reza Banakar & Max Travers, eds, *Theory and method in socio-legal research* (Oxford: Hart Publishing, 2005) at ix.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid* at x.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

focus on legal rules and legal doctrine by remaining exogenous to the existing legal system, in order to construct a theoretical understanding of that legal system in terms of the wider social structures.”<sup>43</sup> In contrast, socio-legal studies employs sociology as a tool for data collection but not for substantive analysis.<sup>44</sup> For this reason, the ‘socio’ in socio-legal studies doesn’t necessarily refer to sociology or social sciences, but rather “represents an interface with a context within which law exists.”<sup>45</sup> This is why when socio-legal researchers – or *religio*-legal in my case – use social theory in their analysis, they tend to address the concerns of law and legal studies instead of those of sociology and social sciences.<sup>46</sup>

#### Thesis Overview and Methodology

Having identified the meaning, place and importance of religious studies in modern higher education, the aim of the present thesis is to demonstrate the critical role it can and should play in the public education system in Quebec, with the necessary adaptations. To do so, we will apply a legal studies methodology grounded in a doctrinal approach, including critical constitutional, legal case and policy analyses.

Beginning by introducing the contemporary Canadian religious landscape as it has evolved over the last decade and as evidenced by the most recent Canadian Census data, we will seek to define religion and freedom of religion as it is understood under the Canadian Charter of Rights and Freedoms. Through this constitutional analysis, we will explore the concept of state neutrality as

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<sup>43</sup> *Ibid* at xi.

<sup>44</sup> *Ibid*.

<sup>45</sup> *Ibid* at xii.

<sup>46</sup> *Ibid*.

it applies to the public sphere and, more specifically, to education and the current religious education curriculum in Quebec.

In the second part of the thesis, we will continue with a legal case analysis of some of the leading Quebec and Canadian court judgments having dealt with the interaction of religious education and freedom of religion, drawing parallels between them and seeking to underscore the delicate balancing act that the courts must perform in weighing a person's right to religious freedom as protected by the Canadian Charter and the duty of the state to provide its citizens with quality education.

Finally, we will turn to the Quebec government's announced plans for imminent religious education reform and, through a policy analysis of local and international standards and guidelines for teaching about religions in schools as well as scholarly opinions thereon, we will propose a way forward with regard to religious education in the province as aligns with the state's duty of neutrality whilst respecting the religious freedom of students and their parents and satisfying the state's obligation to provide comprehensive education in a liberal, pluralistic society.

### A Portrait of Canada's Religious Diversity

Every ten years, Statistics Canada unveils a portrait of the Canadian religious landscape, each iteration, dating back to 1871, reflecting an ever-changing, diverse, and complex mosaic of the Canadian population. The diversity of religious beliefs among Canadians is closely related to the variety of origins and cultural distinctions observed throughout the nation.<sup>47</sup> The latest Census to

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<sup>47</sup> Statistics Canada, "Religiosity in Canada and its evolution from 1985 to 2019" by Louis Cornelissen, *Insights on Canadian Society* (Ottawa: StatsCan, 28 October 2021) at 1 [Cornelissen Report].

include questions about religion was held in May 2021, with data relating to “ethnocultural and religious diversity” released on October 26<sup>th</sup>, 2022.<sup>48</sup> As a result, we benefit from a contemporaneous snapshot of the religious affiliations of Canadians, which will serve as an important launching point for the discussion to follow.

Statistics Canada acknowledges the difficulty in measuring a concept like religion. Given the lack of an internationally recognized classification system for religion, Statistics Canada relied on the advice of data users, academic experts, and representatives from various religious groups in developing the list of religions disseminated for the 2021 Census of Population.<sup>49</sup> According to Statistics Canada, the question “What is this person’s religion?” refers to “a person’s self-identified connection to or affiliation with any religious denomination, group, body, or other religiously defined community or system of belief.”<sup>50</sup> Religion, in this context, is not limited to formal membership in a religious organization or group.<sup>51</sup> Statistics Canada further provides that “a person who has no religious affiliation can choose to select the “No religion” option or enter other responses, such as “Atheist” (does not believe in the existence of God) or “Agnostic” (believes nothing can be known about the existence of God) in the “Specify one denomination or religion only box.”<sup>52</sup>

To help respondents better understand the question about religion and encourage them to provide more detailed responses than in previous censuses, some important changes were made.<sup>53</sup> The

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<sup>48</sup> Statistics Canada. Census of Population, 2021.

<sup>49</sup> Statistics Canada, *Religion Reference Guide* (Ottawa: StatsCan, 8 February 2023) [Stats Can Reference Guide].

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

most notable change to the 2021 question about religion was the inclusion of 13 examples of denominations and religions on the paper form questionnaire, as well as instructions to visit a webpage with over 200 different examples of religions and religious groups or denominations.<sup>54</sup> The list of examples provided on the paper long-form questionnaire differs slightly from that provided on the paper short-form version. The examples of religions and denominations offered on both paper version questionnaires combined include “Roman Catholic, United Church, Anglican, Muslim, Baptist, Hindu, Pentecostal, Lutheran, Presbyterian, Sikh, Buddhist, Jewish and Greek Orthodox, Traditional (North American Indigenous) Spirituality, Jehovah’s Witness, Church of Jesus Christ of Latter-day Saints, Longhouse, Moravian and Salvation Army.”<sup>55</sup>

The most dramatic change on the Canadian religious scene since the 1960s has been the growth among those having no religious affiliation. According to the 2021 Census, approximately 12.6 million Canadians – more than one-third of Canada’s population – identified as having no religion or having a secular perspective (atheist, agnostic, humanist, or other).<sup>56</sup> This proportion of the population has more than doubled in 20 years, rising from 16.5% in 2001, to 23.9% in 2011 and to 34.6% in 2021.<sup>57</sup> No religion is now the second-largest Census category after Christianity, thus representing the second-largest religion-related demographic in Canada, having surpassed Catholicism which now sits at 29.9% of the country’s population.<sup>58</sup>

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<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> Statistics Canada, “The Canadian census: A rich portrait of the country’s religious and ethnocultural diversity”, *The Daily* (Ottawa: StatCan, 26 October 2022) at 13 [Census Portrait].

<sup>57</sup> *Ibid.*

<sup>58</sup> Stats Can Reference Guide, *supra* note 49.

Statistics Canada highlights the fact that immigration alone does not account for the increase of the population identifying as non-religious. Between 2011 and 2021, only “21.5% of immigrants admitted [to Canada] declared no religious affiliation”<sup>59</sup>, and “this proportion is lower than the proportion of the population with no religious affiliation posted in 2011 (23.9%) and 2021 (34.6%).”<sup>60</sup> The two groups contributing to the sharp increase in those identifying as having no religion are (1) children under the age of 10 who were born in Canada and have no religious affiliation<sup>61</sup> and (2) people who reported a religious affiliation in the past but now report none.<sup>62</sup> This highlights two important trends: the generational effect of non-religious parents raising their children in non-religion, and more Canadians moving away from religion and choosing to disaffiliate. Both trends will be explored further when we look at the evolution of religiosity in Canada more broadly.

Immigration has, however, contributed to another key shift in the Canadian religious scene, that is, the increase of those identifying as Muslim, Hindu and Sikh.<sup>63</sup> After Christianity, Islam was the “second most commonly reported religion in Canada in 2021, with nearly 1.8 million people.”<sup>64</sup> The share of the Muslim population in Canada has therefore more than doubled since 2001, up from 2.0% to 4.9% of the population.<sup>65</sup> The same proportional increase was seen amongst those identifying as Hindu and Sikh, which have also more than doubled since 2001, from 1.0% to 2.3%,

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<sup>59</sup> Census Portrait, *supra* note 56 at 13.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

and 0.9% to 2.1% respectively, for a total of 830,000 people reporting Hinduism and about 770,000 reporting Sikhism.<sup>66</sup>

Another interesting fact is that despite the 1.8 million people with Indigenous identity, only 81,000 people (or 0.2% of the total Canadian population) reported a traditional Indigenous spirituality.<sup>67</sup> Further to that, nearly half (47.0%) of those with Indigenous identity reported having no religious affiliation and more than one-quarter (26.9%) reported being Catholic.”<sup>68</sup> Important to note when it comes to data concerning indigenous communities is their lack of participation in the Canadian Census, which “result[s] in less than reliable numbers regarding [indigenous] individuals in Canada.”<sup>69</sup> This phenomenon is in large part due to the way that the religion question has been expressed and defined by Statistics Canada in the past. While the 2021 Census included “traditional (North American Indigenous) spirituality” in their list of examples of religions, it had not been so explicit in the past. For example, the religion question in the 2001 Census stated that religion “refers to specific denominations, groups or bodies, as well as to sects, cults, or other religiously defined communities or systems of belief.”<sup>70</sup> It is understandable that such a definition of religion “might well result in skewed responses by [indigenous] communities, who consider religion referring to Christianity.”<sup>71</sup> Therefore, not only is indigenous spirituality likely more prominent in Canadian society than the recent Census indicates, but it has been – and still is – living in the shadow of a colonial Christian conception of religion.

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<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid* at 15.

<sup>68</sup> *Ibid.*

<sup>69</sup> Marc Fonda, “Canadian Census Figures on Aboriginal Spiritual Preferences: A Revitalization Movement?” in *Religious Studies and Theology*, vol 30, no 2 (London: Equinox Publishing, 2011) 171 at 172.

<sup>70</sup> Statistics Canada. *Census of Population*, 2001.

<sup>71</sup> Fonda, *supra* note 69 at 181.



Furthermore, it has been found that much of the Canadian indigenous population “does not identify with a ‘religion’, [as] they understand religious labels as a further dimension of settler colonialism removed from their own spiritual and community traditions.”<sup>72</sup> These spiritual traditions are typically referred to by members of indigenous communities as “sacred beliefs”<sup>73</sup> and, much in contrast with what European Christian society views as religion, these beliefs are often centered on natural features, such as “certain trees or certain rocks, certain river bends, and landmarks that are significant.”<sup>74</sup> Sacred beliefs were at the heart of a recent court battle between the Ktunaxa Nation and the province of British Columbia.<sup>75</sup> In this case, the Supreme Court of Canada prioritized economic development over the protection of indigenous spirituality in allowing the construction of a year-round ski-resort on land considered by the Ktunaxa Nation as a “central area of paramount spiritual significance”<sup>76</sup>, thus failing to acknowledge the importance of indigenous traditional and spiritual beliefs.

### The Evolution of Religiosity in Canada

Louis Cornelissen, an analyst at the Centre for Demography at Statistics Canada, examined data from several cycles of the General Social Survey between 1985 and 2019 which were used to better understand the diverse relationships Canadians have with religion.<sup>77</sup> Cornelissen highlights that

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<sup>72</sup> Sarah Wilkins-Laflamme, “Second to None: Religious Nonaffiliation in the Pacific Northwest” in Paul Bramadat, Patricia O’Connell Killen & Sarah Wilkins-Laflamme, eds, *Religion at the edge: nature, spirituality, and secularity in the Pacific* (Vancouver: UBC Press, 2022) 100 at 104.

<sup>73</sup> Suzanne Crawford O’Brien, “Border Crossings: Indigenous Spirituality and Culture in Cascadia” in Paul Bramadat, Patricia O’Connell Killen & Sarah Wilkins-Laflamme, eds, *Religion at the edge: nature, spirituality, and secularity in the Pacific* (Vancouver: UBC Press, 2022) 60 at 64.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54.

<sup>76</sup> *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2015 BCCA 352 at para 9.

<sup>77</sup> Cornelissen Report, *supra* note 47.

religious diversity is not limited to religious affiliation as “there are also many different ways to experience religion individually, that is, there are a variety of practices, beliefs and roles that religion or spirituality plays in the lives of individuals.”<sup>78</sup> In order to gain a comprehensive understanding of the evolution of religiosity in Canada, Cornelissen’s report considers multiple aspects of individual relations to religion concurrently. Specifically, the study examines changes in the following four indicators: “(1) religious affiliation, (2) frequency of participation in group religious activities, (3) frequency of engaging in religious or spiritual activities on one’s own, and (4) the importance of religious or spiritual beliefs in how one lives one’s life.”<sup>79</sup>

Some key trends presented by Cornelissen include a decline not only in religious affiliation among Canadians, but also in “the frequency of participation in group religious activities, the frequency of engaging in religious or spiritual activities on one’s own, and the importance placed on religious and spiritual beliefs in one’s life.”<sup>80</sup> In 1985, 90% of individuals aged 15 and over reported having a religious affiliation, as opposed to 68% in 2019. Furthermore, the proportion of people participating in organized religious activities at least once a month was almost cut in half during that period, from 43% in 1985 to 23% in 2019. Additionally, in 2003, 71% of people found their spiritual or religious beliefs to be moderate or very significant, compared to 54% in 2019. Lastly, the proportion of people engaging in religious or spiritual activities on their own at least once a week decreased from 46% in 2006 to 30% in 2019.<sup>81</sup>

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<sup>78</sup> *Ibid* at 2.

<sup>79</sup> *Ibid*.

<sup>80</sup> *Ibid* at 6.

<sup>81</sup> *Ibid*.

Reflecting the trends revealed in the 2021 Census data, Cornelissen finds that the “changes over time in religiosity indicators are primarily due to a succession of generations characterized by different forms of religiosity.”<sup>82</sup> More generally, “the younger the cohort, the lower the proportion of those who reported having a religious affiliation, the less frequent the participation in group religious activities, the less frequent the individual religious or spiritual activities, and the less importance given to religious and spiritual beliefs in how one lives one’s life.”<sup>83</sup> Therefore, the replacement of older cohorts with those of more recent generations would appear to be the main driver of religiosity over time.<sup>84</sup>

People’s religiosity has also evolved over the course of their lives, particularly in ways that corroborate the trend towards disaffiliation from religion. As noted by Cornelissen, “in virtually all cohorts, the frequency of group and individual religious activities and the importance placed on religious and spiritual beliefs in one’s life tended to decline with age.”<sup>85</sup> That said, religious disaffiliation has been more common among the youngest age group (15 to 30 years).<sup>86</sup> Cornelissen points out that “for those who do not report having a religious affiliation, but come from a religious family background, it is often in late adolescence and early adulthood that this transition in religious identification or non-identification takes place.”<sup>87</sup>

Considering the above, it is important to note that the 2021 Census questionnaires – whether long-form or short-form – were sent to the ‘head[s] of household,’ who are asked to answer on behalf

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<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid* at 7.

<sup>86</sup> *Ibid* at 8.

<sup>87</sup> *Ibid.*

of all members of the household, which of course include their children. In fact, the questionnaires included instructions about this very situation. Heads of household with children are instructed to report the denomination or religion in which their children will be raised.<sup>88</sup> It is therefore quite likely that the data reported underestimates the no religion category, especially among younger children and adolescents, as they are reported as being affiliated with their parents' religion.

### A Snapshot of Religion in Quebec

According to the 2021 Census, Quebec is the only province or territory where more than half the population reported being Catholic (53.8%); however, this still represents a steep decline in Catholic identity, down from three quarters (74.7%) of the population in 2011.<sup>89</sup> The most significant shift amongst Catholics seemed to be towards “no religion”, which now represents 27% of Quebec's population, up from 12% in 2011.<sup>90</sup> Cornelissen also distinguished Quebec from the other provinces as having “the highest proportion of people who simultaneously reported having a religious affiliation and who considered their religious or spiritual beliefs not very important or not important at all to how they live their lives (40%, compared with proportions ranging from 15% to 25% in the other provinces). Quebec also had the lowest proportion of people participating in group religious activities at least once a month (14%, compared with 21% to 32% in the other provinces).”<sup>91</sup>

Despite the comparatively higher religious affiliation present in Quebec, it is often – more often than any other province or territory – combined with a low level of importance placed on religious

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<sup>88</sup> Stats Can Reference Guide, *supra* note 49.

<sup>89</sup> Census Portrait, *supra* note 56 at 15.

<sup>90</sup> *Ibid.*

<sup>91</sup> Cornelissen Report, *supra* note 47 at 11.

or spiritual beliefs. Even within the unique context of Quebec, Cornelissen finds a significant contrast between age cohorts with respect to both religious affiliation and the importance placed on religious or spiritual beliefs.<sup>92</sup>

More specifically, between 2017 and 2019, “younger cohorts were more likely to report having no religious affiliation (30% of those born between 1980 and 1999, compared with 13% of those born between 1960 and 1979, and 7% of those born between 1940 and 1959).” For those who did report having a religious affiliation, “from one birth cohort to the next, a growing share – always greater than elsewhere in the country – also indicated that their religious beliefs were not very important or not important at all to the way they lived their life.”<sup>93</sup> In fact, “this was the case for 42% of Quebec residents born between 1940 and 1959, 50% of those born between 1960 and 1979, and 62% of those born between 1980 and 1999.”<sup>94</sup> In short, “the combination of affiliation to a specific religion, low importance given to beliefs and low participation in religious activities is significantly more prevalent in Quebec than elsewhere in Canada.”<sup>95</sup>

From far and wide, Canada’s youth have a much different relationship with religion than the generations that preceded them. A considerable portion of children in Quebec are increasingly non-religious or place little to no importance on their religious beliefs – beliefs which are commonly reported according to their family background rather than self-identification. It is this demographic of Quebec society, where the phenomenon of non-religion is most prevalent, and who are seen transitioning away from religious family backgrounds at increasing rates, who are

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<sup>92</sup> *Ibid* at 12.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

entering classrooms in schools across the province. At the same time, religious diversity is expanding beyond the historically dominant Christian denominations, with the so-called minority religions increasing in numbers and, now more than ever, especially in large urban centres<sup>96</sup>, contributing to the most religiously heterogeneous society – and classrooms – this country has ever seen.

This is undoubtedly a significant trend which will need to be considered by government, courts and lawmakers in shaping the future development of education about religion in Quebec schools – which has, over the years, taken many different and sometimes controversial forms. In this religiously diverse reality, there is a delicate balance that needs to be struck between the protection of individual rights and freedoms and the government's obligations with regard to education. The questions that arise are three-fold: (1) how does the law treat religion and non-religion in the public sphere, (2) how have the courts dealt with questions of religious freedom within the context of our education system (both in Quebec and in the rest of Canada), and (3) what should religious education look like in an increasingly multicultural, pluralistic and secular society?

### Legal Definitions of Religion

Religion and law continue to interact in increasingly complex ways, most notably as regards individual rights and religious freedom. The interpretation and protection of these fundamental rights and freedoms require a workable definition of religion.<sup>97</sup> Historically, the English common law was quite reluctant to tackle the question of defining religion.<sup>98</sup>

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<sup>96</sup> Census Portrait, *supra* note 56 at 16.

<sup>97</sup> Russell Sandberg, *Law and Religion* (New York: Cambridge University Press, 2011) at 39.

<sup>98</sup> *Ibid.*

“There has never been a universal legal definition of religion in English law, and experience across the common law world over many years has shown the pitfalls of attempting to attach a narrowly circumscribed meaning to the word. There are several reasons for this – the different contexts in which the issue may arise, the variety of world religions, developments of new religions and religious practices, and developments in the common understanding of the concept of religion due to cultural changes in society.”<sup>99</sup>

Lord Justice Winn, quite rightly so, referred to religion as a “chameleon word” in the case of *R v. Registrar, ex parte Segerdal*.<sup>100</sup> In this 1970 decision from the Court of Appeal of England and Wales, Lord Justice Winn wrote that “the answer to that specific question must depend so directly upon the meaning that one gives, for the particular purpose and in the particular context.”<sup>101</sup> A decade later, Justice Dillon provided a very narrow definition in *Re South Place Ethical Society*<sup>102</sup> which was elaborated as follows: “two of the essential attributes of religion are faith and worship; faith in a god and worship of that god.”<sup>103</sup>

An interesting issue that arises from this minimalist definition is whether or not faiths that believe in more than one god, such as Hinduism, or in no god at all, such as Buddhism or perhaps even atheism, would be excluded from the definition and further raises the question of what qualifies as worship. In *R v. Registrar, ex parte Segerdal*, Lord Justice Buckley notes that worship “must have some, at least, of the following characteristics: submission to the object worshipped, veneration of that object, praise, thanksgiving, prayer or intercession.”<sup>104</sup> As for the question of “faith in a god”, the English courts have more recently turned to the partial definition found in the *Charities Act*

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<sup>99</sup> *Hodkin & Anor, R (on the application of) v Registrar-General of Births, Deaths and Marriages*, [2013] UKSC 7777 at para 34.

<sup>100</sup> *R v Registrar, ex parte Segerdal*, [1970] 2 QB 697.

<sup>101</sup> *Ibid* at 43.

<sup>102</sup> *Re South Place Ethical Society*, [1980] 1 W.L.R. 1565 at 1572.

<sup>103</sup> Sandberg, *supra* note 97 at 45.

<sup>104</sup> *Ibid* at 44.

2011, which provides that “‘religion’ includes – (i) a religion which involves belief in more than one god, and (ii) a religion which does not involve belief in a god.”<sup>105</sup> The British courts have also referred to the *Equality Act 2010* which, interestingly, may be interpreted as assimilating non-religion to a religion: “Religion means any religion and a reference to religion includes a reference to a lack of religion.”<sup>106</sup>

Across the pond, the question of defining religion hasn’t been any simpler. According to American scholar Winnifred Fallers Sullivan, “legally encompassing the religious ways of people in an intensely pluralist society is most likely impossible.”<sup>107</sup>

The increasing multiculturalism and pluralism of Canadian society made it crucial to seek a more expansive – and thus inclusive – definition of religion. In 2004, Justice Iacobucci of the Supreme Court of Canada, while recognizing the difficulty in defining what is meant by religion, provided a useful definition in *Syndicat Northcrest v. Amselem*<sup>108</sup> (hereinafter “**Amselem**”):

“Defined broadly, religion typically involves a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual’s spiritual faith and integrally linked to one’s self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.”<sup>109</sup>

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<sup>105</sup> *Charities Act 2011* (UK), c 25, s. 3(2)(a).

<sup>106</sup> *Equality Act 2010* (UK), c 15, s. 10(1).

<sup>107</sup> Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton: Princeton University Press, 2005) at 138. This book describes one of the first Religious Freedom Restoration Act cases in the State of Florida, brought in 1998 on behalf of a group of residents who complained that the City of Boca Raton had “substantially burdened” the exercise of their religion by forbidding the erection and maintenance of small homemade shrines on the graves of their dead relatives in a city cemetery.

<sup>108</sup> *Syndicat Northcrest v Amselem*, 2004 SCC 47 [*Amselem*].

<sup>109</sup> *Ibid* at para 39.



This acutely individualistic and subjective definition of religion has been criticized for being too wide and yet too narrow. For some, the definition of religion requires an objective aspect for fear that fictitious claims of religion may become impossible to weed out. For others, this individualistic definition of religion lacks collective, communal and cultural aspects.<sup>110</sup>

It would be difficult to fit non-religion into the Amselem definition. As the most rapidly growing religious identity in Canada, the question as to where non-religion fits into legal definitions of religion has been posed. In a case before the Human Rights Tribunal of Ontario<sup>111</sup>, the adjudicator found atheism to fall within the meaning of “creed” as defined in Section 1 of the Ontario *Human Rights Code*.<sup>112</sup> In this case, the Tribunal found that the District School Board of Niagara had discriminated against the atheist plaintiff on the basis of creed through its policy which *only* permitted the Gideons – a Christian group – to distribute religious materials in its schools, and on the basis of which the Board refused the plaintiff’s request to distribute atheist materials.

Another indication of the courts viewing non-religion as included in “religion” can be found in Justice Marie Deschamps’ definition of “state neutrality” in *S.L. v. Commission scolaire des Chênes* (hereinafter “S.L.”) which she explains as the state showing “respect for all postures towards religion, including that of having no religious beliefs whatsoever.”<sup>113</sup>

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<sup>110</sup> Howard Kislowicz, “Trying to put an ocean in a paper cup: An argument for the “undefinition of religion”, *Canadian Diversity* 9:3 (Summer 2012) 29.

<sup>111</sup> *R.C. v District School Board of Niagara*, 2013 HRT0 1382.

<sup>112</sup> *Human Rights Code*, RSO 1990, c H.19. Section 1 reads as follows: “Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.”

<sup>113</sup> *S.L. v Commission scolaire des Chênes*, 2012 SCC 7 at para 32 [S.L. SCC].

Despite its pitfalls, the working definition of religion provided in Amselem paints a portrait of *what* is being protected by the constitutional freedom of conscience and religion. The question then becomes: *how* is it being protected? In the next section, we will look to define the freedom of conscience and religion and explore its development through Canadian case law.

### Freedom of Conscience and Religion under the Canadian Charter

On April 17th, 1982, the Canadian Constitution was formally patriated and the *Canadian Charter of Rights and Freedoms*<sup>114</sup> (hereinafter the “**Canadian Charter**”) was constitutionally entrenched.<sup>115</sup> Most of the rights contained therein, including the freedom of religion, were not new – they had longstanding implicit recognition within Canadian constitutional tradition.<sup>116</sup> Yet, this newfound status ensured that courts across Canada had a clear mandate to review legislation in violation of the Charter and to provide “appropriate and just” reparation to anyone whose rights and freedom had been infringed.<sup>117</sup>

The freedom of conscience and religion was crystallized at Section 2(a) of the Canadian Charter.

It reads:

“2. Everyone has the following fundamental freedoms:  
(a) freedom of conscience and religion; [...]”<sup>118</sup>

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<sup>114</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Canadian Charter*]

<sup>115</sup> Brian Dickson, “The Canadian Charter of Rights and Freedoms: Context and Evolution” in Errol Mendes & Stéphane Beaulac, eds, *Canadian Charter of Rights and Freedoms*, 5<sup>th</sup> ed (Markham: LexisNexis, 2014) 3 at 3.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Canadian Charter*, *supra* note 114, s 24(1).

<sup>118</sup> *Ibid.*, s 2(a).

Like any right or freedom in a modern and democratic society, the freedom of conscience and religion protected by the Canadian Charter is not absolute, as supported by the Section 1 limitation clause:

“1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”<sup>119</sup>

In order to establish that the limit imposed is reasonable and demonstrably justified in a free and democratic society, two criteria must be met: (1) there must be a sufficiently significant objective for overriding the constitutionally protected right, and (2) the means chosen to limit the right must be reasonable and demonstrably justified or, in other words, proportional.<sup>120</sup> It is interesting to note that Section 1 of the Canadian Charter was in part a reaction to the American *Bill of Rights* which guaranteed individual rights absolutely and without limitation, and in which the Canadian constitutional drafters saw the risk of losing “values of community and representative democracy.”<sup>121</sup>

Much like the definition of religion, the ways in which the courts have interpreted Section 2(a) of the Canadian Charter have evolved over time. The first Section 2(a) freedom of religion case to be decided by the Supreme Court of Canada<sup>122</sup> was *R. v. Big M Drug Mart Ltd.* (hereinafter “Big M”), a landmark decision from 1985 which lay the groundwork for the constitutional limit test<sup>123</sup>

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<sup>119</sup> *Ibid*, s 1.

<sup>120</sup> *R. v Oakes*, [1986] 1 SCR 103 at para 69-70.

<sup>121</sup> Errol P. Mendes, “Section 1 of the Charter after 30 years: The Soul or the Dagger at its Heart?” in Errol Mendes & Stéphane Beaulac, eds, *Canadian Charter of Rights and Freedoms*, 5<sup>th</sup> ed (Markham: LexisNexis, 2014) 293 at 293-294.

<sup>122</sup> Richard Moon, “Freedom of Conscience and Religion” in Errol Mendes & Stéphane Beaulac, eds, *Canadian Charter of Rights and Freedoms*, 5<sup>th</sup> ed (Markham: LexisNexis, 2014) 339 at 339.

<sup>123</sup> The test established in *R. v. Oakes* is partly derived from the two-step process provided in *Big M*.

that is still applied by courts around the country to this day. Big M Drug Mart had been accused of selling goods on Sundays, in violation of the federal *Lord's Day Act*. Finding the purpose of the law to be “compelling sabbatical observance”<sup>124</sup>, the Supreme Court of Canada concluded that the *Lord's Day Act* infringed the right to freedom of conscience and religion guaranteed in Section 2(a) of the Canadian Charter, a violation that was deemed unjustified on the basis of Section 1.

Justice Dickson, in his reasons for the majority in Big M, famously provided a definition of the freedom of religion under Section 2(a):

“A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. [...] The essence of the concept of freedom of religion is the right to entertain such religious 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. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free.”<sup>125</sup>

To elaborate on the definition of “freedom”, Justice Dickson wrote:

“Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. 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.”<sup>126</sup>

Summed up, the purpose of the freedom of conscience and religion can be explained as follows:

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<sup>124</sup> *R. v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at para 78 and 93 [*Big M*].

<sup>125</sup> *Ibid* at para 94.

<sup>126</sup> *Ibid* at para 95.

“The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided inter alia only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own.”<sup>127</sup>

The description of freedom of conscience and religion provided in Big M remains to this day the definition *par excellence*. However, subsequent judgements reveal a shift in the courts’ description of religious freedom: while earlier decisions placed emphasis on the protection of personal autonomy and liberty, later cases describe the freedom of conscience and religion as protecting equality.<sup>128</sup> Therefore, “freedom” not only prohibits state coercion as referred to in Big M; it also requires the state to take an even-handed approach and treat all religious traditions and communities equally.<sup>129</sup> With this perspective, the state should not prefer or support the practices of one religious tradition or community, unless it is deemed necessary to protect an important and compelling public interest.<sup>130</sup> As expressed by Richard Moon, “this shift from a liberty or autonomy-based approach to religious freedom to an equality-based approach reflects a change in the courts’ understanding of religion (and its value) as a cultural identity rather than simply a personal commitment or choice.”<sup>131</sup>

Almost two decades after Big M, in the Amselem case, the Supreme Court of Canada defined the scope of freedom of religion and its infringements. Through its religious freedom analysis, the Court set out the principles applicable in cases where an individual alleges that his or her freedom

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<sup>127</sup> *Ibid* at para 123.

<sup>128</sup> Moon, *supra* note 122 at 340.

<sup>129</sup> *Ibid*.

<sup>130</sup> *Ibid*.

<sup>131</sup> *Ibid* at 348-49.

of religion is infringed under the Canadian Charter or, as in the case at hand, under Quebec's *Charter of Human Rights and Freedoms*<sup>132</sup> (hereinafter the “**Quebec Charter**”). Unlike the Canadian Charter, the Quebec Charter applies to private law relationships as well. Section 3 of the Quebec Charter guarantees the freedom of religion:

“3. Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.”<sup>133</sup>

The case of *Amselem* involved plaintiffs of Orthodox Jewish faith who erected succahs<sup>134</sup> on their balconies in a luxury residential condo building in Montreal in which they were divided co-owners. The syndicate of co-ownership contested the structures as being contrary to the building's by-laws which prohibited “decorations, alterations and constructions” on the building's balconies. The Supreme Court of Canada held that preventing the plaintiffs from erecting succahs on their balconies amounted to a violation of their freedom of religion under the Quebec Charter, which could not be justified under the Section 9.1 limitation clause.<sup>135</sup>

Through its analysis, the Court put forth a two-step test. In order to establish a freedom of religion, the plaintiff must demonstrate that:

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<sup>132</sup> *Amselem*, *supra* note 108 at para 37.

<sup>133</sup> *Charter of Human Rights and Freedoms*, RSQ c C-12, s 3 [*Quebec Charter*], The Quebec Charter applies to relationships between individuals and the Quebec state, as well as between individuals themselves in private matters.

<sup>134</sup> For clarity, and as described in *Amselem* at para. 5, “a succah is a small enclosed temporary hut or booth, traditionally made of wood or other materials such as fastened canvas, and open to the heavens, in which, it has been acknowledged, Jews are commanded to “dwell” temporarily during the [nine-day] festival of Succot, which commences annually with nightfall on the fifteenth day of the Jewish month of Tishrei.”

<sup>135</sup> *Quebec Charter*, *supra* note 133, s 9.1 reads as follows: “In exercising his human rights and freedoms, a person shall maintain a proper regard for democratic values, State laicity, the importance given to the protection of French, public order and the general well-being of the citizens of Québec. In this respect, the scope of the freedoms and rights, and limits to their exercise, may be fixed by law.” It is well-established that Section 9.1 of the Quebec Charter is of the same nature as Section 1 of the Canadian Charter (see *Chaoulli c. Québec (Procureur général)*, 2005 CSC 35 at para. 46-48).

“(1) he or she has a practice or belief, having a nexus with religion, which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual’s spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and

(2) he or she is sincere in his or her belief.”<sup>136</sup>

(my emphasis)

Only once the religious freedom is triggered can the court proceed to determine whether or not there has been an infringement thereof. To do so, the plaintiff must “show that the impugned contractual or legislative provision (or conduct) interferes with his or her ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial.”<sup>137</sup>

A trivial or insubstantial interference was later interpreted as an “interference that does not threaten actual religious beliefs or conduct.”<sup>138</sup>

## State Neutrality

One route to establishing a Section 2(a) infringement is to show a breach of “state neutrality” with respect to religion.<sup>139</sup> It is well-established in Canadian case law that the state owes a duty of neutrality between religions.<sup>140</sup> As early as *Big M*, the Court wrote that the “protection of one religion and the concomitant non-protection of others imports disparate impact destructive of the religious freedom of the collectivity.”<sup>141</sup>

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<sup>136</sup> *Amselem*, *supra* note 108 at para 56.

<sup>137</sup> *Ibid* at para 59.

<sup>138</sup> *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 32.

<sup>139</sup> *Servatius v Alberni School District No. 70*, 2020 BCSC 15 at para 69.

<sup>140</sup> Bruce Ryder, “State Neutrality and Freedom of Conscience and Religion” (2005) 29 Sup Ct L Rev (2d) 169 at 171.

<sup>141</sup> *Big M*, *supra* note 124 at para 98.

The concept of state neutrality may carry different meanings and, as such, it is said to suffer from a certain instability.<sup>142</sup> While international jurisprudence declares state neutrality as “the foundational demand flowing from a commitment to religious freedom”<sup>143</sup>, it has been “applied selectively and inconsistently across and within liberal democracies, reflecting the variety of postures towards religion that flow from the particularities of local political histories, cultural inheritances, and conceptions of secularism.”<sup>144</sup>

Justice Harlan of the U.S. Supreme Court famously stated in *Board of Education v. Allen*<sup>145</sup> that neutrality “is a coat of many colors.”<sup>146</sup> Bruce Ryder, Canadian professor of law at Osgoode Hall, has added that the concept of state neutrality is an “elusive concept” with “no fixed meaning”<sup>147</sup>, the contents of which “is heavily influenced by historical factors and changing cultural contexts.”<sup>148</sup> It is therefore no surprise that the meaning of neutrality may morph across time and jurisdictions.<sup>149</sup>

Canada has a unique conception of state neutrality. The concrete separation of church and state – as exists in the United States – is not reflected in our constitutional tradition. John S. Moir, Canadian history Professor from the University of Toronto, has noted that “Canada has rejected

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<sup>142</sup> Richard Moon & Benjamin L. Berger, “Introduction: Religious Neutrality and the Exercise of Public Authority” in Richard Moon & Benjamin L. Berger, eds, *Religion and the Exercise of Public Authority* (Oxford: Hart Publishing, 2016) 1 at 3.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*

<sup>145</sup> *Board of Education v. Allen*, 392 U.S. 236 (1968)

<sup>146</sup> *Board of Education v. Allen* at 249, cited in Bruce Ryder, “State Neutrality and Freedom of Conscience and Religion” (2005) 29 Sup Ct L Rev (2d) at 171.

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*



the European tradition of church establishment without adopting the American idea of complete separation.”<sup>150</sup> Moir asserts that “Canadians in fact assume the presence of an unwritten separation of church and state, without denying an essential connection between religious principles and national life or the right of the churches to speak out on matters of public importance.”<sup>151</sup>

Indeed, the Canadian Constitution paradoxically announces that Canada is a nation “founded upon the principles that recognize the supremacy of God and the rule of law.”<sup>152</sup> Ryder, however, interprets the supremacy of God clause as a manifestation of state neutrality: “[It] is perhaps best understood as a reminder of the state’s role in not just respecting the autonomy of faith communities, but also in nurturing and supporting them, as long as it does so in an even-handed manner.”<sup>153</sup>

In the 2004 case of *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*<sup>154</sup>, the dissenting Supreme Court Justice LeBel undertook a scholarly analysis of the state duty of religious neutrality.<sup>155</sup> He described it as follows:

“[S]ocietal changes have tended to create a clear distinction between churches and public authorities, placing the state under a duty of neutrality. Our Court has recognized this aspect of freedom of religion in its decisions, although it has in so doing not disregarded the various sources of our country’s historical heritage. The concept of neutrality allows churches and their members to play an important role in the public space where societal debates take place, while the state acts as an essentially neutral intermediary in relations between the various denominations and between those denominations and civil society.”<sup>156</sup>

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<sup>150</sup> John S. Moir, *Church and State in Canada, 1627-1867* (Toronto: McClelland and Stewart, 1967) at xiii.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, preamble, reprinted in RSC 1985, App II, No 5, preamble.

<sup>153</sup> Ryder, *supra* note 140 at 176 [*Constitution Act*].

<sup>154</sup> *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48 [*Lafontaine*].

<sup>155</sup> The majority of the Court avoided the religious freedom issue and based its reasons in administrative law.

<sup>156</sup> *Lafontaine*, *supra* note 154 at para 67.

Further to simply defining the concept, Justice LeBel questioned whether governments *can* or *should* take positive action to facilitate and support religious freedoms. He concluded that, while the default stance is for the state to adopt a posture of restraint, positive government action is sometimes necessary in order to give meaning to the fundamental freedom of religion and, in such cases, a position of restraint would effectively interfere with the exercise of this freedom. For Justice LeBel, this would constitute a reasonable limit to the principle of state neutrality.<sup>157</sup> Ryder concurs in this positivist approach, holding that “freedom of religion should not be interpreted as imposing a duty on the State to refrain from even-handed religious support.”<sup>158</sup>

Canada’s commitment to state neutrality has more concisely been understood as requiring the privatization of religion, through “both the exclusion and insulation of religion from political decision-making.”<sup>159</sup> It is said that the state “must base its actions on non-religious grounds or must advance secular or civic rather than religious purposes, and it must not interfere with religious practices unless this is necessary to the public interest.”<sup>160</sup> As previously mentioned, however, the Canadian courts have not consistently enforced state neutrality as so described.<sup>161</sup>

Is state neutrality possible or an unattainable ideal? The Supreme Court concedes that “trying to achieve religious neutrality in the public sphere is a major challenge for the state.”<sup>162</sup> The fundamental problem with achieving true neutrality is that “religious beliefs sometimes have

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<sup>157</sup> *Ibid* at para 77 and 79.

<sup>158</sup> Ryder, *supra* note 140 at 185.

<sup>159</sup> Moon, *supra* note 122 at 343.

<sup>160</sup> *Ibid*.

<sup>161</sup> *Ibid*.

<sup>162</sup> *S.L. SCC, supra* note 113 at para 30.

public implications.”<sup>163</sup> True state neutrality may be achievable if religion can be isolated to strictly private matters, but this just isn’t our social reality.<sup>164</sup> Religious belief systems often deal with moral values and dictate the manner in which people should treat others and provide ideals for which society should strive.<sup>165</sup> It has been posited that since “religious beliefs also address civic concerns that cannot be distinguished from non-religious beliefs, they cannot be fully excluded or insulated from political-decision making.”<sup>166</sup>

#### Mouvement Laïque Québécois v. Saguenay (City)

It is worth discussing one of the most renowned Supreme Court state neutrality cases to illustrate how the theory is put into practice. The Supreme Court’s decision in *Mouvement laïque québécois v Saguenay (City)*<sup>167</sup> was rendered in 2015, though the facts go back to the previous decade.

This highly mediatized case was sparked by a mayor’s practice of opening city council sessions with a prayer. At the beginning of each meeting, Jean Tremblay, the Mayor of the Quebec municipality of Saguenay, would stand with his councillors and recite the following prayer into a microphone:

[Translation] *O God, eternal and almighty, from Whom all power and wisdom flow, we are assembled here in Your presence to ensure the good of our city and its prosperity.*

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<sup>163</sup> Moon, *supra* note 122 at 343.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

<sup>167</sup> *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 [*Saguenay*].

*We beseech You to grant us the enlightenment and energy necessary for our deliberations to promote the honour and glory of Your holy name and the spiritual and material [well-being] of our city. Amen.*<sup>168</sup>

In addition to this prayer, the Mayor would begin by making the sign of the cross while saying “in the name of the Father, the Son and the Holy Spirit,”<sup>169</sup> which itself is clearly of Roman catholic tradition.<sup>170</sup> Furthermore, depending on the meeting venue, there was sometimes a crucifix, which measured “over two feet in height, a foot wide and five inches thick”<sup>171</sup>, in the council chambers and other times a Sacred Heart statue, which “stood nine feet from the floor of the town hall room.”<sup>172</sup>

Saguenay resident Alain Simoneau, who identifies as atheist, regularly attended these city council meetings and felt uncomfortable with this religious display.<sup>173</sup> In 2006, Mr. Simoneau requested that the Mayor cease the practice, but the Mayor refused.<sup>174</sup> Sometime thereafter, Mr. Simoneau – with the support of the Mouvement laïque québécois<sup>175</sup> (hereinafter “**MLQ**”) – filed an application with the Quebec Human Rights Tribunal mainly alleging that the prayer recitation was a discriminatory interference with Mr. Simoneau’s freedom of conscience and religion, guaranteed by Section 3 of the Quebec Charter.<sup>176</sup>

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<sup>168</sup> *Ibid* at para 7.

<sup>169</sup> *Ibid* at para 6.

<sup>170</sup> *Ibid*.

<sup>171</sup> Lori G. Beaman, “Universal and Foundational: Law’s Constitution of an Ethic of Belonging for Nones” in Enzo Pace, Luigi Berzano & Giuseppe Giordan, eds, *Annual Review of the Sociology of Religion*, vol 7 (Leiden: Brill, 2016) 17 at 24.

<sup>172</sup> *Ibid*.

<sup>173</sup> *Saguenay*, *supra* note 167 at para 8.

<sup>174</sup> *Ibid*.

<sup>175</sup> The Movement laïque québécois is a non-profit organization who advocates for freedom of religion in a completely secular Quebec state.

<sup>176</sup> *Simoneau c Tremblay*, 2011 QCTDP 1 at para 1.

It should be noted that parallel to this, a municipal by-law was adopted by the City of Saguenay which lightly reworded the prayer and provided for a two-minute break after the prayer before the official start of the meetings, thus allowing those who did not wish to partake in prayer to arrive on time.<sup>177</sup> Despite the adoption of this by-law, the Mayor and councilors continued to act in the same manner they did prior – namely in making the sign of the cross – and the reworded prayer was still very religious in nature, making reference to an “Almighty God.”<sup>178</sup> Mr. Simoneau and the MLQ therefore amended their application to ask the Tribunal to declare the by-law inoperative and of no force.

The City of Saguenay took the position that the prayer and religious symbols were not in fact religious but rather a part of the heritage and culture of Quebec, and therefore represented universal values.<sup>179</sup> The Tribunal, after evaluating all of the evidence, which included three expert witnesses, rejected the City’s argument. It concluded that the prayer was religious in nature and that its recital showed preference for one religion over another.<sup>180</sup> The Tribunal further observed that Mr. Simoneau “felt isolated, uncomfortable and excluded”<sup>181</sup> which led them to conclude “that the prayer and the exhibiting of religious symbols resulted in an interference with his freedom of conscience and religion that was more than trivial or insubstantial, and this interference was discriminatory.”<sup>182</sup> The Tribunal further found that the by-law was incompatible with the state’s duty of religious neutrality as its purpose was clearly religious, which could not be valid nor

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<sup>177</sup> *Saguenay*, *supra* note 167 at para 12.

<sup>178</sup> *Ibid* at para 13.

<sup>179</sup> Beaman, *supra* note 171 at 25.

<sup>180</sup> *Saguenay*, *supra* note 167 at para 15.

<sup>181</sup> *Ibid*.

<sup>182</sup> *Ibid*.

justified under section 9.1 of the Quebec Charter.<sup>183</sup> The Tribunal, as a remedy, declared the by-law inoperative and invalid, ordered the ceasing of the prayer recitation and the removal of all religious symbols.<sup>184</sup>

The Quebec Court of Appeal, however, expressed drastically different views. Justice Gagnon began by rejecting the expert evidence that was considered by the Tribunal claiming that it had no probative value as the experts “lacked objectivity and impartiality.”<sup>185</sup> Justice Gagnon then went on to introduce a concept of “benevolent neutrality”<sup>186</sup> which requires that the state “neither encourage nor discourage any belief or non-belief”<sup>187</sup>, and stated that “the concept of neutrality does not require the state to abstain from involvement in religious matters.”<sup>188</sup> Most importantly, he was of the opinion that “the duty of neutrality must be complied with in a manner that is consistent with society’s heritage and traditions, and with the state’s duty to preserve its history [...] which includes religious heritage.”<sup>189</sup> Justice Gagnon was also of the opinion that the prayer reflected “universal values”<sup>190</sup> and couldn’t be associated to any one particular religious tradition.<sup>191</sup> On the issue of religious symbols, the Court of Appeal held that the Tribunal lacked jurisdiction due to procedural issues but Justice Gagnon still expressed his opinion on the subject in stating “the Sacred Heart statue and the crucifix were works of art that were devoid of religious connotation and did not affect the state’s neutrality.”<sup>192</sup> Interestingly, however, despite the Court’s

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<sup>183</sup> *Ibid* at para 16.

<sup>184</sup> *Ibid* at para 17.

<sup>185</sup> *Ibid* at para 20.

<sup>186</sup> *Ibid*.

<sup>187</sup> *Ibid*.

<sup>188</sup> *Ibid*.

<sup>189</sup> *Ibid*.

<sup>190</sup> *Ibid* at para 21.

<sup>191</sup> *Ibid*.

<sup>192</sup> *Ibid*.

conclusion that the prayer and symbols were non-religious and universal, Mayor Tremblay was quite transparent about his motivations:

“I’m in this battle because I worship Christ. When I get to the hereafter, I’m going to be able to be a little proud. I’ll be able to say to Him: ‘I fought for you; I even went to trial for You.’ There’s no better argument. It’s extraordinary. I’m in this fight because I worship Christ. I want to go to heaven and it is the most noble fight of my entire life.”<sup>193</sup>

In conclusion, the Court of Appeal found that the recital of the prayer was not an interference with Mr. Simoneau’s freedom of conscience and religion beyond anything trivial or insubstantial and, therefore, Mr. Simoneau had not been discriminated against.<sup>194</sup>

Finally, the Supreme Court of Canada overruled the Court of Appeal’s decision on the question of prayer, “unanimously holding that its recitation before council meetings infringed upon Mr. Simoneau’s right to freedom of conscience and religion and that it was indeed a violation of state neutrality.”<sup>195</sup> Unfortunately, however, the Court agreed that the Tribunal lacked the jurisdiction to consider the question of religious symbols, and further added that the Court of Appeal erred in extending its own jurisdiction to consider the issue.<sup>196</sup>

Justice Gascon, on behalf of the unanimity of the Supreme Court, affirmed that it is the state’s duty to protect everyone’s freedom of conscience and religion and that, in order to do so, the state “may not use its powers in such a way as to promote the participation of certain believers or non-believers in public life to the detriment of others. It is prohibited from adhering to one religion to

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<sup>193</sup> Beaman, *supra* note 171 at 27.

<sup>194</sup> *Saguenay*, *supra* note 167 at para 22.

<sup>195</sup> Beaman, *supra* note 171 at 29.

<sup>196</sup> *Ibid.*

the exclusion of all others.”<sup>197</sup> He further added that “the state’s duty of neutrality has become a necessary consequence of enshrining freedom of conscience and religion in the Canadian and Quebec *Charter*.”<sup>198</sup> Justice Gascon then elaborated on the concept of state neutrality adding that “the state may not act in such a way as to create a preferential public space that favours certain religious groups and is hostile to others. It follows that the state may not, by expressing its own religious preference, promote the participation of believers to the exclusion of non-believers or vice versa.”<sup>199</sup>

The Supreme Court also explicitly rejected the Court of Appeal’s formulation of “benevolent neutrality” and focused on a standard of “true neutrality.”<sup>200</sup> Justice Gascon affirmed:

“the state’s duty to remain neutral on questions relating to religion [cannot] be reconciled with a benevolence that would allow it to adhere to a religious belief. State neutrality means [...] that the state must neither encourage nor discourage any form of religious conviction whatsoever. If the state adheres to a form of religious expression under the guise of cultural or historical reality or heritage, it breaches its duty of neutrality. If that religious expression also creates a distinction, exclusion or preference that has the effect of nullifying or impairing the right to full and equal recognition and exercise of freedom of conscience and religion, there is discrimination.”<sup>201</sup>

The Supreme Court’s decision can be seen to be moving away from the trend of legally constructing majoritarian religious practice or symbols as culture or heritage. However, in refusing to discuss the issue of religious symbols, the Supreme Court left the door open for future courts to use the Court of Appeal’s interpretation in considering them culture or heritage.<sup>202</sup> It is worth

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<sup>197</sup> *Saguenay*, *supra* note 167 at para 76.

<sup>198</sup> *Ibid*.

<sup>199</sup> *Ibid* at para 75.

<sup>200</sup> *Ibid* at para 78.

<sup>201</sup> *Ibid*.

<sup>202</sup> *Beaman*, *supra* note 171 at 30.



cautioning that by “refram[ing] religious practices and symbols as culture and heritage in a manner that preserves majoritarian religion, minority religions and those who are non-religious are excluded from both the past and the present constitution of society and nation,”<sup>203</sup> further casting them to the peripherals of society.

### Quebec’s Secularization, *Laïcité* and Education

Quebec has a complicated context because of language politics, nationalism and the historical role of the Catholic Church: “This is often told as a story of oppression in contemporary accounts, described as the *Grande Noirceur*, which ended with the Quiet Revolution in the 1960s and 1970s.”<sup>204</sup> The Catholic Church remains a persistent presence in Quebec society, though arguably a declining one as evidenced by the 2021 Census.

In Quebec, religion and education were long intertwined. From the very founding of New France in the early 17<sup>th</sup> century, the Catholic Church “enjoyed the status of sole state religion”<sup>205</sup> and education was placed under its responsibility.<sup>206</sup> Following the *Treaty of Paris* in 1763, “the Anglican church became the official state religion, although social realities prompted governments to give official recognition to the status and role of the Catholic church and various Protestant denominations.”<sup>207</sup> At the time of Confederation, the concept of religious neutrality implied

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<sup>203</sup> *Ibid.*

<sup>204</sup> Lori G. Beaman, *The Transition of Religion to Culture in Law and Public Discourse* (Abingdon, UK: Routledge, 2020) at 28.

<sup>205</sup> Lafontaine, *supra* note 154 at para 66.

<sup>206</sup> Stéphanie Gravel, “Religious Education in Quebec’s Ethics and Religious Culture Curriculum: A Cultural Approach” in Lori G. Beaman et al, eds, *Religious Education in a Global-Local World* (Switzerland: Springer International Publishing, 2016) 223 at 225.

<sup>207</sup> Lafontaine, *supra* note 154 at para 66.

primarily respect for different Christian denominations.<sup>208</sup> The *Constitution Act, 1867* rendered education of exclusive provincial legislative competency<sup>209</sup> and, in Quebec, guaranteed separate schools for Catholics and Protestants administered by denominational school boards.

In the year following Confederation, Quebec established its first Ministry of Public Instruction<sup>210</sup> headed by the province's Premier, which crumbled only seven years later under the "ultramontane" pressures of the Catholic church.<sup>211</sup> It was promptly replaced by the Department of Public Instruction,<sup>212</sup> composed of a Protestant committee and a Catholic committee, of which all bishops and apostolic vicars of Quebec became *ex officio* members.<sup>213</sup> The situation remained virtually unchanged until the 1960s.

The Quiet Revolution of the 1960s was a time of profound social, political and economic change in Quebec, viewed as an era of "intense secularization, if not outright de-Christianization" of society.<sup>214</sup> The Royal Commission of Inquiry into Teaching of 1964 (also known as the Commission Parent) marked the beginning of the secularization of Quebec's education, with the State setting up a public education system and the "clergy losing its role as manager".<sup>215</sup> Still, the denominational education system and curriculum remained in effect – even with the adoption of

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<sup>208</sup> *Ibid.*

<sup>209</sup> *Constitution Act*, *supra* note 15, s 93. It should be noted that Québec eliminated constitutionally protected denominational schools in 1997 by virtue of the *Constitutional Amendment, 1997, (Québec)*.

<sup>210</sup> *Acte concernant la charge de Ministre de l'Instruction publique, 1867-68*, 31 Vict, c 10.

<sup>211</sup> Martial Dassylva, *Les vingt-cinq dernières années du comité catholique du conseil de l'Instruction publique (1939-1964) : entre la réalité et l'idéologie* (Doctoral Thesis, Université du Québec à Montréal, 2013) [unpublished] at 43.

<sup>212</sup> *Acte pour amender de nouveau la loi concernant l'Instruction*, SQ 1875, 39 Vict, c 15.

<sup>213</sup> Dassylva, *supra* note 211 at 2.

<sup>214</sup> Michel Gauvreau, *The Catholic Origins of Quebec's Quiet Revolution, 1931-1970* (Montreal: McGill-Queen's University Press, 2005) 4 at 4.

<sup>215</sup> Gravel, *supra* note 206 at 225.

constitutional<sup>216</sup> and quasi-constitutional<sup>217</sup> protections of freedom of conscience and religion. It wasn't until the late 1990s that the government began taking significant steps towards deconfessionalizing the province's education system, the reasons for which were articulated in a statement before the National Assembly by then Minister of Education Pauline Marois in March of 1997:

“[TRANSLATION] The social and religious landscape is shifting in all regions of Quebec. Public schools must respect the free choice or the free refusal of religion. This is a democratic freedom. In other words, all schools must respect each student's freedom of conscience, even if the student stands alone with respect to the majority. All schools must teach students to respect different allegiances. However, our schools must not altogether dismiss religious education. They must show that they are open and able to recognize, regardless of specific convictions and from a critical point of view, the contribution made by the different religions in terms of culture, values and humanism.”<sup>218</sup>

This set the stage for what was to come. The deconfessionalization process took roughly ten years and concluded with a new secular religious education program:

“From a legal perspective, this process, which really began with the creation of linguistic school boards in 1998, will be completed in September 2008 with the introduction of an Ethics and Religious Culture Program intended for all elementary and secondary school students. In the interim, Bill 118, adopted in 2000, has made considerable changes to the denominational school system. The new legislative framework surrounding Quebec public schools conveys the State's neutrality with respect to religion. Open to the student's spiritual development, this framework makes room for the diversity of religious traditions within schools while respecting the “freedom of conscience and of religion of the students, the parents and the school staff” and without favouring any particular religious or secular perspective.”<sup>219</sup>

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<sup>216</sup> *Canadian Charter*, *supra* note 114.

<sup>217</sup> *Quebec Charter*, *supra* note 133.

<sup>218</sup> Quebec, National Assembly, *Journal des débats*, 35th Leg, 2nd Sess (26 March 1997) at 5993 (Pauline Marois). Translation by the Supreme Court of Canada in *S.L.* at para 13.

<sup>219</sup> Quebec, Comité sur les affaires religieuses, *Secular Schools in Québec: A Necessary Change in Institutional Culture*, Brief to the Minister of Education, Recreation and Sports (Quebec: Ministère de l'Éducation, du Loisir et du Sport, 2006) at 1 [*Comité des affaires religieuses*].

## The ERC Program

Since 2008, the Ethics and Religious Culture program (hereinafter the “**ERC**” program) has been mandatory in all elementary and secondary schools in Quebec, private or public (though private schools may offer denominational teaching as well)<sup>220</sup>, replacing the curriculum options parents previously had between Protestant religious education, Catholic religious education and moral education.<sup>221</sup> The idea is that “by grouping all the students together, rather than dividing them into groups according to their beliefs, and by promoting the development of attitudes of tolerance, respect and openness, we are preparing them to live in a pluralist and democratic society.”<sup>222</sup> Thus, rather than doing away with the subject of religion entirely and “sheltering” children from any semblance of religious reference, Quebec saw fit to introduce them to the wide spectrum of beliefs present in their communities. In a 2006 brief to the Minister of Education, the *Comité sur les affaires religieuses* (Religious Affairs Committee) wrote:

“A successful shift to a nondenominational school system does not imply a homogenization of the cultures that exist in the schools. Precisely because of their flexibility and openness, secular schools should be able to reflect the diversity of the institutional cultures they exemplify.”<sup>223</sup>

The objectives of the ERC program are two-fold: (1) the recognition of others, and (2) the pursuit of the common good.<sup>224</sup> The program seeks to achieve these goals through the development of the following skills:

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<sup>220</sup> Gravel, *supra* note 206 at 227.

<sup>221</sup> *Ibid* at 225.

<sup>222</sup> Quebec, Ministère de l'Éducation, du Loisir et du Sport, *Quebec Education Program, Elementary Education – Update* (Quebec : Ministère de l'Éducation, du Loisir et du Sport, 2008) [Quebec Education Update].

<sup>223</sup> *Comité des affaires religieuses*, *supra* note 219 at 13.

<sup>224</sup> Gravel, *supra* note 206 at 227.

- Reflecting on ethical questions: teachers must introduce the different values, morals and standards that make up our pluralistic society without favoring one over another.<sup>225</sup>
- Demonstrating an understanding of religion: teachers must provide students with the theoretical and cultural knowledge required to understand the many religions represented in Quebec in an effort to promote “togetherness”.<sup>226</sup>
- Engaging in dialogue: teachers must encourage students to interact with others and present and support their own points of view in light of the information provided.<sup>227</sup>

As the program’s name suggests, one of its particularities is its cultural approach to religion:

“It is considered “cultural” because it is aimed at the ability to grasp the field of religion by means of its various forms of expression in time and space. It allows for understanding the signs in which the religious experiences of individuals and groups are conveyed that contribute to shaping society. Moreover, it does not espouse any particular set of beliefs or moral references.”<sup>228</sup>

Thus, in order to ensure that a cultural approach is used for non-denominational religious teaching, the teacher’s role had to be redefined as that of a “cultural mediator” whose responsibility it is to remain objective and impartial: they must only teach cultural knowledge of religion.<sup>229</sup> Despite the fact that the ERC program appears to have all the ingredients for a modern, objective and secular religious education program, it is unfortunately on its last legs as the Quebec government has decided to take a different route, as we will see in Part Three.

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<sup>225</sup> *Ibid.*

<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.*

<sup>228</sup> Quebec Education Update, *supra* note 222.

<sup>229</sup> Gravel, *supra* note 206 at 238.

## PART TWO – Religious Education: Legal Challenges and Issues

The deconfessionalizing of Quebec’s school system and the introduction of the ERC program didn’t come without its share of legal challenges from members of religious communities, both individual and institutional. In this second part, I will examine two key Quebec cases before the Supreme Court of Canada which helped shape the judicial landscape of religious freedom in this country and how it applies in the context of education.

The first case I will look at, *S.L. c. Commission scolaire des Chenes*, is an illustration of the public-private dichotomy whereby, in the Court’s view, the State holds a duty to expose children to a variety of religious facts and worldviews while the parents maintain their right to pass their personal beliefs onto their children at home.<sup>230</sup> In the second case that I will examine, *Loyola High School v. Quebec (Attorney General)* (hereinafter “**Loyola**”), the same Court places a limit on State neutrality, recognizing the private denominational institution’s right to perpetuate the religious beliefs that found its very *raison-d’être*.<sup>231</sup>

I will also explore a number of cases from the “rest of Canada”, which both set the stage for – and ground themselves in – the principles put forth in SL and Loyola. It is interesting to note that, in the last twenty years, a significant number of the Supreme Court of Canada’s religious freedom cases have dealt with the educational sphere.<sup>232</sup>

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<sup>230</sup> *S.L. SCC*, *supra* note 113 at para 32 and 40.

<sup>231</sup> *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at para 61 [*Loyola SCC*]

<sup>232</sup> Mark A. Witten, “Tracking Secularism: Freedom of Religion, Education, and the Trinity Western University Law School Dispute” (2016) 79 Sask L Rev 215 (CanLII) at 1.

*S.L. v. Commission scolaire des Chênes*

It didn't take long for the constitutionality of the ERC program to be called into question. In 2008, as the "new" ERC program was making its way into Quebec classrooms, two Catholic parents of school-aged children in Drummondville, Quebec, identified only as S.L. and D.J., made a request to the *Commission scolaire des Chênes* (hereinafter the "**School Board**") to have their children exempt from the ERC course. They argued that their children's required participation in the course would result in "serious harm" as set out in Section 222 of Quebec's *Education Act* <sup>233</sup>, which allows for curriculum exemptions "for humanitarian reasons or to avoid serious harm to a student".<sup>234</sup> The request was denied, first by the director of educational resources and again by the School Board's council of commissioners.

The following year, S.L. and D.J. brought a motion before the Superior Court of Quebec for judicial review of the denied request and for declaratory judgment against the School Board seeking to establish that the compulsory nature of the ERC program infringed their<sup>235</sup> and their children's freedom of conscience and religion as protected by Sections 3 of Quebec's Charter and 2(a) of the Canadian Charter.

As noted above, in such constitutional cases, the court must first determine whether there was in fact an infringement of a right or freedom guaranteed by the charter. If so, the court must then determine whether such an infringement is justified in accordance with the limitation clauses

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<sup>233</sup> *Education Act*, RSQ c I-13.3.

<sup>234</sup> *Ibid* s 222.

<sup>235</sup> It has been recognized that parents have a constitutional right to raise their children in accordance with their religious beliefs. See: *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315.

provided at Sections 9.1 of the Quebec Charter and 1 of the Canadian Charter. If no infringement is found, the analysis stops there.

In applying this analysis, the trial judge, Justice Jean-Guy Dubois, explained that a person's simple *belief* that a legislative rule interferes with their religious belief or practice is not in itself sufficient to establish that there has in fact been an infringement of their freedom of conscience or religion. Rather, there must be objective proof of an interference with the observance of that practice.<sup>236</sup>

The evidence presented in court demonstrated that the plaintiffs sincerely believed that the fact of presenting several different religions through the ERC program could lead their children to confusion and to be affected in their freedom of conscience and religion.<sup>237</sup> The subjective element was therefore fulfilled. However, an expert opinion presented by a Catholic abbot on behalf of the School Board provided convincing and objective evidence, to the satisfaction of the judge, that the Catholic church subscribes to the objective of acquainting the faithful with other religious traditions.<sup>238</sup> Thus, the burden of objective proof was not met.

Consequently, the Superior Court of Quebec dismissed the motion for declaratory judgment finding that there was no infringement of the plaintiffs' Charter rights. Justice Dubois wrote:

“[67] It is incumbent on the parents and the pastors of the Catholic Church, in the case of the plaintiffs, to ensure that their children understand that the religious precepts of the Catholicism to which they adhere can be implemented in a free and enlightened manner while still recognizing the existence of other religions.

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<sup>236</sup> *S.L. Commission scolaire des Chênes, 2009 QCCS 3875* at para 36 [S.L. QCCS]

<sup>237</sup> *Ibid* at para 49.

<sup>238</sup> *Ibid* at para 62, citing page 12 of Abbot Gilles Routhier's expert report.



[68] Regarding the new [ERC] program, the school will present the range of the various religions and bring the children to engage in dialogue on self-recognition and the common good. Subsequently, the additional work for religious practice therefore falls upon the parents and pastors of the church to which the parents and children have adhered.

[69] In light of all the evidence presented, the court does not see how the ERC program interferes with the plaintiffs' freedom of conscience and religion for their children, since a comprehensive presentation of various religions is made without obliging the children to adhere to them."<sup>239</sup>

The matter was brought on appeal all the way to the Supreme Court of Canada, where the Superior Court of Quebec's findings were upheld and the appeal dismissed. Justice Marie Deschamps, writing for the majority, first confirmed the need for an objective analysis of the claimed infringement:

"[23] At the stage of establishing an infringement, however, it is not enough for a person to say that his or her rights have been infringed. The person must prove the infringement on a balance of probabilities. This may of course involve any legal form of proof, but it must nonetheless be based on facts that can be established objectively. [...]

[24] 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."<sup>240</sup>

(my emphasis)

Finally, Justice Deschamps sided with the trial judge's conclusions that a comprehensive presentation of various religions, without forcing children to join them, does not constitute an

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<sup>239</sup> *Ibid* at para 67-69 (translated).

<sup>240</sup> *S.L. SCC, supra note 113* at para 23 and 24.

infringement of the appellants' and their children's freedom of conscience and religion.<sup>241</sup> She explained:

“[40] Parents are free to pass their personal beliefs on to their children if they so wish. However, the early exposure of children to realities that differ from those in their immediate family environment is a fact of life in society. 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 government's obligations with regard to public education. Although such exposure can be a source of friction, it does not in itself constitute an infringement of s. 2(a) of the Canadian Charter and of s. 3 of the Quebec Charter.”<sup>242</sup>

(my emphasis)

The Supreme Court's opinion, as expressed by Justice Deschamps, relies heavily on an analysis of the state's duty of religious neutrality which, as she writes, is “now seen by many Western states as a legitimate means of creating a free space in which citizens of various beliefs can exercise their human rights”<sup>243</sup>, whilst philosophically conceding that “absolute neutrality does not exist.”<sup>244</sup>

### The Case of Loyola High School

While the S.L. case dealt with the constitutionality of the ERC program in the public school system, this next case dealt with it in the context of a private, denominational school.

Loyola High School (hereinafter “**Loyola**”) is a private Jesuit Catholic high school for boys,<sup>245</sup> with roots dating back to 1848.<sup>246</sup> In 2008, Loyola applied to the Quebec Minister of Education

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<sup>241</sup> *Ibid* at para 36 and 37.

<sup>242</sup> *Ibid* at para 40.

<sup>243</sup> *Ibid* at para 10.

<sup>244</sup> *Ibid* at para 31.

<sup>245</sup> Loyola has announced that it will be admitting girls beginning in the 2023-2024 school year.

<sup>246</sup> *History*, online: Loyola High School < <https://www.loyola.ca/about/history> >

for an exemption from teaching the ERC program under Section 22.1 of the *Regulation respecting the application of the Act respecting private education*,<sup>247</sup> on the basis that its own curriculum offered an equivalent course – one through which Catholicism was taught from a religious Catholic perspective. The Minister refused the exemption on the basis that an “equivalent course” must be taught from a neutral perspective, like the ERC program.

In a lawsuit brought before the Superior Court of Quebec,<sup>248</sup> Loyola contested the Minister’s decision and argued that its refusal to grant the exemption – based on the confessional character of Loyola’s program – infringed Loyola’s rights protected by Sections 3 of the Quebec Charter and 2(a) of the Canadian Charter.<sup>249</sup>

The courts chose not to analyse the case under the latter disposition as it remains unclear whether, in these circumstances, a legal person (such as Loyola) can invoke its freedom of religion under the Canadian Charter.<sup>250</sup> The analysis proceeds therefore under Section 3 of the Quebec Charter, which the trial judge deemed to have a wider application than its federal counterpart, namely due to the use of “every *person*” as opposed to “everyone”.<sup>251</sup> The Supreme Court of Canada chose not to engage in a legal review of the question, simply recognizing that “individuals may

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<sup>247</sup> *Regulation respecting the application of the Act respecting private education*, RSQ c E-9.1, r 1. Section 22.1 reads as follows: “The Minister may, on the conditions he determines, exempt from the application of all the provisions of the Act any person or body dispensing in its facilities a portion or all of the programs of study in vocational training determined by the Minister and enumerated in a list set up by both the Minister and the Minister of Employment and Social Solidarity.”

<sup>248</sup> *Loyola High School v Courchesne*, 2010 QCCS 2631 [*Loyola QCCS*].

<sup>249</sup> Loyola also made important arguments based founded in administrative law, which are not relevant to our study.

<sup>250</sup> *Loyola QCCS*, *supra* note 248 at para 207. See also Nicole Duplé, *Droit constitutionnel : principes fondamentaux*, 7th ed. (Montreal: Wilson & Lafleur, 2018) 303.

<sup>251</sup> *Ibid* at para 210.

sometimes require a legal entity in order to give effect to the constitutionally protected communal aspects of their religious beliefs and practices.”<sup>252</sup>

On the constitutional question, the Superior Court acknowledged that the Minister’s refusal to grant the exemption placed Loyola in a difficult situation: either Loyola teaches the ERC course according to the Minister’s program thus violating the “supreme principles” which, according to Loyola’s expert Douglas Farrow, govern its freedom of religion, or it teaches the subject matter through its Catholic confessional program thus breaking the law.<sup>253</sup> Farrow testified to the fact that God must occupy a central position in the education dispensed by any Catholic school,<sup>254</sup> to deny God as the Supreme End, as the teacher would need to do in maintaining the neutral posture toward religion as required by the ERC program, would constitute an interference for that teacher and for the school.<sup>255</sup>

Following a lengthy analysis, the Superior Court determined that the ERC program established by the Minister imposed on Loyola a pedagogy that is contrary to the teachings of the Catholic Church and, in so doing, infringed Loyola’s freedom of religion as protected by Section 3 of the Quebec Charter<sup>256</sup> – an infringement which the court deemed unjustifiable under Section 9.1 of the Quebec Charter. Justice Dugré concluded: “the obligation imposed on Loyola to teach the ERC subject in a secular manner is of a totalitarian character equivalent, in essence, to the order given to Galileo by the Inquisition to deny Copernicus’ cosmology.”<sup>257</sup>

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<sup>252</sup> *Loyola SCC*, supra note 231 at para 33.

<sup>253</sup> *Loyola QCCS*, supra note 248 at para 271.

<sup>254</sup> *Ibid* at para 275.

<sup>255</sup> *Ibid* at para 277.

<sup>256</sup> *Ibid* at para 287.

<sup>257</sup> *Ibid* at para 331.

In 2012, the Superior Court's decision was unanimously overturned by the Quebec Court of Appeal, who found that "there is no actual infringement, or at least none that is significant" and that "even if there is infringement, [...] it is justified."<sup>258</sup> Justice Jacques R. Fournier, J.A., wrote:

"In this case, I do not find that compelling Loyola to teach religious beliefs and ethics comprehensively, without any requirement to subscribe to these beliefs, constitutes an actual violation. The "relativism" required for teaching does not infringe the school's freedom to teach the Catholic religion. As Loyola indicated in its factum, it is a matter of setting aside the Catholic point of view for the duration of one class."<sup>259</sup>

The case was not so soon closed. Loyola further appealed the decision rendered by the Quebec Court of Appeal to the country's highest tribunal. In 2015, in a highly anticipated and mediatized judgment, the Supreme Court of Canada found that the Minister's insistence that Loyola teach Catholicism and Catholic ethics from a neutral perspective amounted to a serious infringement of Section 2(a) of the Canadian Charter.<sup>260</sup> Justice Abella, writing for the majority, explained:

"[61] [...] The question is not only how Loyola is required to teach about other religions, but also how it is asked to teach about the very faith that animates its character and the comparative relationship between Catholicism and other faiths. The Minister's decision therefore demonstrably interferes with the manner in which the members of an institution formed for the very purpose of transmitting Catholicism, can teach and learn about the Catholic faith. This engages religious freedom protected under s. 2(a) of the Charter.

[62] I agree with Loyola that the Minister's decision had a serious impact on religious freedom in this context. 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.

[...]

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<sup>258</sup> *Québec (Procureur général) v Loyola High School*, 2012 QCCA 2139 at para 175-176 [*Loyola QCA*]

<sup>259</sup> *Ibid* at para 172.

<sup>260</sup> Unlike the Superior Court of Quebec, the Supreme Court of Canada chose to examine the case under Section 2a) of the Canadian, whilst maintaining that "it is not necessary to decide whether Loyola itself, as a corporation, enjoys the benefit of s. 2(a) rights, since the Minister is bound in any event to exercise her discretion in a way that respects the values underlying the grant of her decision-making authority, including the Charter-protected religious freedom of the members of the Loyola community who seek to offer and wish to receive a Catholic education." (See *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at para 34).

[69] In the Quebec context, where private denominational schools are authorized, forcing a religious school to teach its own religion from a non-religious perspective does not assist in realizing the ERC Program's basic curricular goals of encouraging among students respect for others and openness to others. The Minister's decision suggests that engagement with an individual's own religion on his or her own terms can simply be presumed to impair respect for others. This assumption runs counter to the objectives of the regulatory scheme as a whole and it has a disproportionate impact on the values underlying religious freedom in this context. This necessarily renders the Minister's decision unreasonable."<sup>261</sup>

The Supreme Court of Canada took care to distinguish the *Loyola* case from the *S.L.* case, stating that "Loyola is a private religious institution created to support the collective practice of Catholicism and the transmission of the Catholic faith"<sup>262</sup> – contrary to *S.L.* which dealt with the constitutionality of the ERC program in a public non-denominational school.

Some might argue that the *Loyola* case is a step backwards for the secularization of Quebec's education system. It is important to remember that nothing prevents a private institution from offering a religious education course on top of the prescribed ERC program.<sup>263</sup> The Supreme Court's decision in *Loyola* raises questions. Would it not benefit the students, who undoubtedly come from Catholic upbringings,<sup>264</sup> to learn about the religion in which they are so deeply immersed from a neutral perspective? Would this not go far in promoting the goal of self-recognition and the spirit of "togetherness" that the ERC program seeks to develop? Would this not help students to better appreciate how "others" understand their experience?

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<sup>261</sup> *Loyola SCC*, supra note 231 at para 67-69.

<sup>262</sup> *Ibid* at para 61.

<sup>263</sup> *Loyola QCCS*, supra note 248 at para 69.

<sup>264</sup> Admission to the school requires that a "religious recommendation" be provided by the student's priest, minister, pastoral animator, faith first co-ordinator, or catechist: <https://www.loyola.ca/admissions/admissions-process>

These cases provide a well-rounded portrait of the ongoing tension between the desired religious neutrality of a modern democratic state and the deeply held religious beliefs of some members of Quebec society. It is agreed by both courts that, in keeping with the secularism of the state, a position of neutrality is essential to preserving the constitutional freedom to believe or not believe. It is also agreed that imparting information about different views of the world cannot be equated with a violation of freedom of religion or, as applies to the non-religious, freedom from religion. What stands out as lacking in these analyses, however, is any elaboration of non-religion as a range of viable and important worldviews that should have a place in education about religion. This does not privilege non-religion but situates it as a significant part of the complex religious demography of evolving modern societies.

### Cases from ROC

These debates over the fine line between the need for secular education and religious freedom are, of course, not unique to Quebec.

### Zylberberg and the CCLA Case

In some of the earlier Canadian cases dealing with religious education and Charter infringements, the Ontario Court of Appeal was called upon to determine whether the purpose and effects of certain dispositions of an Ontario education regulation<sup>265</sup> infringed upon or denied the freedom of conscience and religion as protected by Section 2(a) of the Canadian Charter. These cases provide excellent examples of the deemed importance of state neutrality in matters of religious education.

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<sup>265</sup> RRO 1980, Reg 262, s 28 [*Ontario Education Regulation*].

### *The CCLA Case*

In *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)*<sup>266</sup> (hereinafter the “CCLA” case), the Ontario Court of Appeal was asked to determine the constitutionality of certain provisions of Section 28 of the regulation and of the Elgin County School Board’s religious studies curriculum.<sup>267</sup>

The regulation provided, at Section 28(4), that two half-hour periods per week must be devoted to religious education. Instruction in religious education would be given by a school teacher<sup>268</sup> or by clergymen of any denomination, with permission of the board.<sup>269</sup> The regulation also provided a right of exemption from instruction in religious education, for students,<sup>270</sup> teachers,<sup>271</sup> and even the board.<sup>272</sup> At the time the lower court application commenced, religious instruction was provided by members of a local Bible Club and taught “largely from a fundamentalist Christian perspective.”<sup>273</sup>

This regulation was enabled by the Ontario *Education Act*,<sup>274</sup> which at the time provided that, “subject to regulations, a pupil shall be allowed to receive such religious instruction as his parent [...] desires”, and that “no pupil in a public school shall be required to read in or study from a religious book, or to join in an exercise of devotion or religion, objected to by his parent [...]”<sup>275</sup>

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<sup>266</sup> *Canadian Civil Liberties Assn. v Ontario (Minister of Education)* (1990), 71 O.R. (2d) 341 [CCLA ONCA]

<sup>267</sup> For our purposes, we will only analyze the constitutionality of the regulation.

<sup>268</sup> *Ontario Education Regulation*, *supra* note 265 s 28(6).

<sup>269</sup> *Ibid* s 28(7).

<sup>270</sup> *Ibid* s 28(10).

<sup>271</sup> *Ibid* s 28(14).

<sup>272</sup> *Ibid* s 28(15).

<sup>273</sup> CCLA ONCA, *supra* note 266 at 2.

<sup>274</sup> At the relevant time: R.S.O. 1980, c. 129. Currently: R.S.O. 1990, chapter E.2.

<sup>275</sup> *Education Act*, RSO 1980, c 129 s 50.



In a split decision, the majority of the Divisional Court found that the regulation did not infringe Section 2(a) of the Canadian Charter as, in its view, it did not compel, coerce, or constrain the students, who could legally request an exemption. While the majority admitted that Christian religious beliefs predominated in the curriculum, it found no prerequisite as to what proportion of time should be spent discussing different religions.<sup>276</sup>

Interestingly, the dissenting Divisional Court judge, Justice Austin, concluded that the original intent of the regulation was to permit the Christian indoctrination of school children and did not consider that the exemption clause sufficed to counter the coercion and pressure the regulation created.<sup>277</sup> He therefore found a Section 2(a) infringement which could not be justified under Section 1 of the Canadian Charter.

Presented with the question at bar, the Ontario Court of Appeal began its analysis with a lengthy historical overview of the regulation and the different amendments it underwent over time. As part of this historical study, the Court looked at the results of the 1966 Mackay Committee – appointed by the provincial government amidst calls for religious education reform – whose mandate it was to review the program of religious instruction in effect in public schools and to recommend improvements.<sup>278</sup> In 1969, the Committee tabled its report which found that the program was one of indoctrination in the Christian faith and way of life, and which recommended an end to religious education in public schools.<sup>279</sup> The Committee “found the present system inconsistent with modern principles of education and proposed instead that the focus be directed to instilling knowledge of

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<sup>276</sup> *CCLA ONCA, supra note 266* at 13-14.

<sup>277</sup> *Ibid* at 14.

<sup>278</sup> *Ibid* at 25.

<sup>279</sup> *Ibid* at 25 and 27.

world religions and transmitting high standards of character, ethical ideals and moral values without trespassing on students' personal religious beliefs.”<sup>280</sup> Following its release, the Mackay report was unfortunately shelved, only to re-emerge as an “authoritative educational expert”<sup>281</sup> in the cases we are now discussing.

On the question of the constitutionality of the regulation, the Court of Appeal studied its purpose and effect as proposed in *Big M*: “either an unconstitutional purpose or an unconstitutional effect can invalidate legislation.”<sup>282</sup> Founding itself on its historical analysis of the regulation, and namely on the results of the Mackay Committee, the Court confirmed the purpose of the regulation to be that of Christian indoctrination. Citing Justice Austin’s Divisional Court dissent: “if all that was involved in “religious education” was teaching in the ordinary sense, it is difficult to understand why any provision should be made for the exempting of students.”<sup>283</sup>

The question then became: does religious indoctrination violate Section 2(a) of the Canadian Charter? The Court of Appeals responded as follows:

“The short answer is that it must. State-authorized religious indoctrination amounts to the imposition of majoritarian religious beliefs on minorities. Although s. 2(a) of the Charter is not infringed merely because education may be consistent with the religious beliefs of the majority of Canadians [...], teaching students Christian doctrine as if it were the exclusive means through which to develop moral thinking and behaviour amounts to religious coercion in the class-room. It creates a direct burden on religious minorities and non-believers who do not adhere to majoritarian beliefs.”<sup>284</sup>

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<sup>280</sup> Leo Van Arragon, “*We educate, they indoctrinate*”: Religion and the politics of togetherness in Ontario public education (Ph.D. Thesis, University of Ottawa, 2015) [unpublished] at 292.

<sup>281</sup> *Ibid* at 62.

<sup>282</sup> *Big M.*, *supra* note 124 at 350.

<sup>283</sup> *CCLA ONCA*, *supra* note 266 at 32.

<sup>284</sup> *Ibid* at 34. Having found an unconstitutional purpose, the Court of Appeal found no reason to proceed with an in-depth analysis of the effects.

In light of the foregoing analysis, the Court of Appeals concluded that Section 28(4) of the regulation was unconstitutional, and that the infringement could not be justified under Section 1 of the Canadian Charter.

This decision, though not appealed to the Supreme Court, was cited by the Supreme Court of Canada in *S.L.*<sup>285</sup> and continues to be relied upon by courts of all levels across the country in dealing with religious education and the constitution.

### *Zylberberg*

While the CCLA case dealt with religious education – that is, the teaching of religious faiths and tenets<sup>286</sup> – this next case dealt with “religious exercises.” In the period of time between the Divisional Court’s judgement in CCLA and its appeal, the Ontario Court of Appeal rendered judgement in *Zylberberg v. Sudbury Board of Education*,<sup>287</sup> in which the constitutionality of Section 28(1) of the same regulation was called into question. Section 28(1) provided that public schools “shall be opened or closed each school day with religious exercises consisting of the reading of the Scriptures or other suitable readings and the repeating of the Lord's Prayer or other suitable prayers.” The schools of the Sudbury Board of Education opened with the National Anthem, followed by the Lord’s Prayer and, in some cases, readings from the Scriptures.

The majority of the Ontario Court of Appeal concluded that Section 28(1) of the regulation infringed the freedom of conscience and religion as protected by Section 2(a) of the Canadian

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<sup>285</sup> *S.L. SCC*, *supra* note 113 at para 20-21.

<sup>286</sup> *CCLA ONCA*, *supra* note 266 at 29

<sup>287</sup> *Zylberberg v Sudbury Board of Education* (1988), 65 O.R. (2d) 64 [*Zylberberg*].

Charter as it imposed Christian observances upon non-Christian pupils and religious observances upon non-believers.<sup>288</sup> Relying heavily on the analysis provided in *Big M*, the majority of the Court of Appeal explained that an important aspect of the freedom of conscience and religion under the Canadian Charter is the freedom from conformity:

“The practice of majoritarian religion cannot be imposed on the religious minorities. The minorities should not be subject to the threat of “tyranny of the majority”.”<sup>289</sup>

Indeed, none of the appellant parents – who were Jewish, Muslim and non-religious – had requested an exemption for their children’s participation in the school’s religious exercises out of fear that they would be singled out by their peers for their religious beliefs. Thus, the Board’s pretention that the right to claim an exemption from participating in religious exercises eliminated any suggestion of pressure or compulsion could not be retained, according to the majority of the Court:

“From the majoritarian standpoint, the respondent’s argument is understandable but, in our opinion, it does not reflect the reality of the situation faced by members of religious minorities. Whether or not there is pressure or compulsion must be assessed from their standpoint and, in particular, from the standpoint of pupils in the sensitive setting of a public school.”<sup>290</sup>

However, the dissenting judge did not find a violation of Section 2(a) of the Charter, instead holding that Section 28(1) of the regulation had a broad secular educational purpose, with a religious component.<sup>291</sup> To him, the separation of church and state in Canada does not go so far as to render the regulation unconstitutional: “In any event, the Canadian Constitution contemplates a

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<sup>288</sup> *Ibid* at 12.

<sup>289</sup> *Ibid* at 11.

<sup>290</sup> *Ibid* at 12.

<sup>291</sup> *Ibid* at 39.

bridge rather than a wall of separation between church and state, so that even a religious purpose or an incidental religious effect would not render the challenged legislation unconstitutional.”<sup>292</sup>

### The Chamberlain Case

In 1997, the Surrey School Board in British Columbia passed a resolution refusing to authorize three books for classroom instruction on the ground that they depicted same-sex parented families which, according to the Board, had the potential to cause controversy in light of some parents’ religious objections to the morality of same-sex relationships.

The case was brought all the way to the Supreme Court of Canada<sup>293</sup> who, in 2002, was called upon to decide whether the resolution was valid. The appellants – none of whom were same-sex parents, nor children thereof – challenged the resolution on the grounds that it violated the principles of secularism and tolerance provided in section 76 of the *School Act*<sup>294</sup> as well as the Canadian Charter. The majority of the Supreme Court ruled that the resolution must be set aside.

Chief Justice Beverly McLachlin, writing for the majority, concluded:

“The Board’s first error was to violate the principles of secularism and tolerance in s. 76 of the School Act. Instead of proceeding on the basis of respect for all types of families, the Superintendent and the Board proceeded on an exclusionary philosophy. They acted on the concern of certain parents about the morality of same-sex relationships, without considering the interest of same-sex parented families and the children who belong to them in receiving equal recognition and respect in the school system. The Board was not permitted to reject the books simply because certain parents found the relationships depicted in them controversial or objectionable.

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<sup>292</sup> *Ibid.*

<sup>293</sup> *Chamberlain v Surrey School District No. 36*, 2002 SCC 86 [*Chamberlain*]

<sup>294</sup> R.S.B.C. 1996, c. 412. Section 76(1) of the School Act reads as follows: “All schools and Provincial schools must be conducted on strictly secular and non-sectarian principles.” Section 76(2) of the School Act reads as follows: “The highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or Provincial school.”

As discussed earlier, the religious origin of the parents' objections is not in itself fatal to the Board's decision. The requirement of secularism in s. 76 does not preclude decisions motivated in whole or in part by religious considerations, provided they are otherwise within the Board's powers. It simply signals the need for educational decisions and policies, whatever their motivation, to respect the multiplicity of religious and moral views that are held by families in the school community [...]"<sup>295</sup>

"I conclude that the Board's decision is unreasonable. It failed to proceed as required by the secular mandate of the *School Act* by letting the religious views of a certain part of the community trump the need to show equal respect for the values of other members of the community."<sup>296</sup>

The Court remanded the question of whether the books should be approved to the School Board and did not see the necessity of considering the constitutionality of the Board's decision under the Canadian Charter.<sup>297</sup>

#### The Hamilton-Wentworth Case

In 2017, the Court of Appeal for Ontario<sup>298</sup> ruled that a staunchly religious Hamilton father, whose children attended a primary school within the Hamilton-Wentworth District School Board, was not victim to a religious freedom violation with regard to the Board's refusal to exempt his children from classroom discussions which he deemed to be anti-Christian. The Appellant, Mr. Turloukis (referred to in the case as "E.T."), maintained that his religious beliefs required him to shelter his children from what his religion regards as "false teachings" including matters such as "moral relativism", "instruction in sex education" and "discussion or portrayals of homosexual/bisexual conduct and relationships and/or transgenderism as natural, healthy or acceptable". He sought to have the Board provide him with advance notice of any classroom instruction or discussion of this nature so that he could choose to withdraw his children from those activities. He qualified the

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<sup>295</sup> *Chamberlain*, *supra* note 293 at para 58-59.

<sup>296</sup> *Ibid* at 71

<sup>297</sup> *Ibid* at 73 and 74.

<sup>298</sup> *E.T. v Hamilton-Wentworth District School Board*, 2017 ONCA 893 [Wentworth]

Board's refusal as a violation of his freedom of religion as guaranteed under Section 2(a) of the Canadian Charter and religious discrimination under the Ontario Human Rights Code. The Court of Appeals overturned a lower court judgement in deciding that there was no Charter violation.

Justice Sharpe wrote:

“[36] The protection of religious freedom, like that of other any other Charter right, “must be measured in relation to other rights and with a view to the underlying context in which the apparent conflict arises” (Amselem, at para. 62; S.L., at para. 25). The relevant context in this case is that E.T.'s children attend a non-denominational public school with a mandate to provide an open, accepting and inclusive educational experience for all children. E.T. did not ask to have his children exempted from certain specific and well-defined elements of the curriculum whose subject matter conflicts with his religious views. He declined the Board's proposal that he withdraw his children from the sex education strand of the curriculum. Instead, he seeks to have advance notice and the ability to have his children leave the classroom at any time a “false teaching” will arise, an exercise that would undermine the message of diversity and inclusion which is woven throughout the integrated curriculum.

[37] Exempting some students on a regular basis from classroom discussions touching on diversity, inclusivity and acceptance, within a public school program designed to promote precisely those principles, would run a serious risk of endorsing the non-acceptance of students of other family backgrounds, sexual orientations, gender expressions and gender identities. One of the principles at the heart of Ontario's EIES is ensuring that all students are able to “see themselves reflected in their curriculum, their physical surroundings, and the broader environment, in which diversity is honoured and all individuals are respected”. ”<sup>299</sup>

### The Servatius Case

The final case I will analyse – and one of the most recent higher court rulings on the subject – comes out of British Columbia, the Canadian province that indicated the highest levels of “no religion and secular perspectives” in the 2021 Census.<sup>300</sup>

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<sup>299</sup> *Ibid* at para 36-37.

<sup>300</sup> 2021 Census: BC was at 52.1%.

In *Servatius v. Alberni School District No. 70*<sup>301</sup> (hereinafter “**Servatius**”), the B.C. Court of Appeal was called upon to decide whether a public elementary school infringed on its students’ and their parents’ freedom of religion, as protected under section 2(a) of the Canadian Charter, by allowing indigenous cultural demonstrations to take place at school. The facts of the case are as follows.

The appellant, Ms. Servatius, is an evangelical Protestant whose two children attended a public elementary school in the Alberni School District on the West coast of Vancouver Island, in which approximately one-third of the students are Indigenous.<sup>302</sup> During the 2015-2016 school year, the school hosted two demonstrations of Indigenous cultural practices: the first was a smudging<sup>303</sup> event in a classroom, while the second was a hoop dance during school assembly whereby the dancer said a prayer. Ms. Servatius alleged that both the smudging event and the prayer that accompanied the dance interfered with her freedom of religion and that of her children.<sup>304</sup>

In first instance before the Supreme Court of British Columbia, the trial judge heard evidence of Ms. Servatius’ and her family’s religious beliefs that “the Bible is the infallible Word of God and the sole authority for religious life” and that “there is no other spiritual authority, spirit, or god

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<sup>301</sup> *Servatius v Alberni School District No. 70*, 2022 BCCA 421 [*Servatius BCCA*]

<sup>302</sup> *Servatius v Alberni School District No. 70*, 2020 BCSC 15 at para 5 [*Servatius BCSC*]

<sup>303</sup> Smudging is a tradition, common to many First Nations, which involves the burning of one or more medicines gathered from the earth, the most common being sage, cedar, and sweetgrass. Source: Government of Manitoba, *Smudging protocol and guidelines for school divisions*, 2019, Minister of Education and Training, Indigenous Inclusion Directorate, page 4.

<sup>304</sup> *Servatius BCSC*, *supra* note 302 at para 2.



worthy of worship, or that should be prayed to.”<sup>305</sup> She testified that her beliefs are “in direct contradiction to the practice of smudging, and the ideas that underlie it.”<sup>306</sup>

The Alberni School District accepted the sincerity of Ms. Servatius’ and her family’s beliefs and did not make an issue of it. Its position was that the children were observing Indigenous demonstrations and were not themselves smudged nor engaged in the hoop dance or the prayer, and that the demonstration needed to be considered in the context of the traumatic history and legacy of residential schools and the pressing need for reconciliation efforts.

The Court also heard evidence from the intervening party, the Nuu-chah-nulth Tribal Council, and the co-defender Attorney General of British Columbia with regard to the history of the area’s indigenous people – including the Alberni Indian Residential School which operated from 1891 to 1973 on property about four kilometres from the school<sup>307</sup> where indigenous children were disciplined by corporal punishment and “repeatedly and brutally sexually assaulted”<sup>308</sup> – and the B.C. school curriculum reforms that have sought to incorporate indigenous worldviews and knowledge.

After citing the definition of freedom of religion provided in *Big M* and recalling the two-part test established in *Amselem* and further circumscribed in *SL*<sup>309</sup>, the trial judge was brought to decide whether Ms. Servatius’ had proven on an objective basis that either the classroom smudging or the

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<sup>305</sup> *Ibid* at para 3.

<sup>306</sup> *Ibid*.

<sup>307</sup> *Ibid* at para 22.

<sup>308</sup> *Blackwater v Plint*, 2005 SCC 58 at para 2.

<sup>309</sup> *Servatius BCSC*, *supra* note 302 at para 67-68

prayer associated with the hoop dancing interfered, in a manner that was more than trivial or insubstantial, with her or her children's ability to act in accordance with their religious beliefs.<sup>310</sup> The question was approached on the basis of two arguments brought forth by Ms. Servatius: the duty of neutrality argument and the compelled participation argument.

Ms. Servatius alleged that, in allowing the cultural demonstrations, the state had sponsored or promoted a particular religious belief in violation of its duty of neutrality, thus infringing the Section 2(a) rights of non-believers of that religion.<sup>311</sup> The trial judge examined whether the Alberni School District had professed, adopted, or favoured Indigenous spirituality:

“I conclude that these smudging and hoop dancing demonstrations were in no way — either by design or in their execution — an expression of the School District's beliefs or an expression of religious favouritism. Rather, the organization of these events reflected a gathering momentum to incorporate the teaching of Indigenous worldviews and perspectives. [...] And, arranging for students to observe hoop dancing, even if the dancing is accompanied by an Indigenous prayer, cannot reasonably be interpreted as the School District professing, adopting, or promoting religious beliefs.”<sup>312</sup>

On the compulsion argument, Ms. Servatius submitted that the “right to not believe in indigenous spirituality, the ability to refuse to participate in these practices, and the freedom from government coercion to affirm a specific religious belief are all protected under Section 2(a) of the Charter.”<sup>313</sup>

“I conclude that proof on an objective basis of interference with the ability of the petitioner or her children to act in accordance with their religious beliefs requires more than the children being in the presence of an Elder demonstrating a custom with spiritual overtones or being in the presence of a dancer who said a brief prayer. In most instances, it is not difficult to recognize the boundary between a student learning about different beliefs and being made to participate in spiritual rituals. A field trip to a mosque to watch prayers would be learning about Islam; an Imam coming to the classroom and demonstrating prayer

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<sup>310</sup> *Ibid* at para 75.

<sup>311</sup> *Ibid* at para 77.

<sup>312</sup> *Ibid* at para 94.

<sup>313</sup> *Ibid* at para 102.

rituals would likewise not be problematic. However, in either of these cases, if the involvement of the students progressed to being called upon to pray or read from the Koran then it might well be said that educators have compelled the manifestation of a specific religious practice or the affirmation of a specific religious belief. If a Catholic priest came to school with altar candles and a censer containing incense to acquaint the students with the sights and scents of Church rites, this would seem to be well within the bounds of what the S.L. case stands for: religious freedom is not compromised when students are taught about other beliefs. If, however, the children underwent a baptism, this would be far over the line.”<sup>314</sup>

The trial judge found no evidence of an infringement of freedom of religion: “Being taught about beliefs is not an infringement of religious freedom — even when this teaching is done by an Elder at close range and in a manner that engages a student’s sense of smell as well as her senses of sight and sound, and even if this teaching results in some “cognitive dissonance.”<sup>315</sup>

On appeal, the Court of Appeal for British Columbia<sup>316</sup> sided entirely with the trial judge’s analysis and conclusions on the Charter question, finding no “palpable and overriding error” committed by the judge.<sup>317</sup>

These are not the first nor the last legal battles of their kind. As Canadian society continues to evolve towards increased pluralism and progressiveness, the values which underlie some legislative norms and governmental action will continue to be contested before this country’s courts, further contributing to the development of our legal understanding of freedom of conscience and religion under the Canadian Constitution in the educational context. Unfortunately,

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<sup>314</sup> *Ibid* at para 107.

<sup>315</sup> *Ibid* at para 122.

<sup>316</sup> *Servatius BCCA, supra note 301* at para 122.

<sup>317</sup> *Ibid* at para 205.

such developments likely won't come out of Quebec as religious education as we know it might soon be a thing of the past.

## PART THREE – The Future of Religious Education in Quebec

On January 10<sup>th</sup>, 2020, Quebec's Minister of Education Jean-François Roberge announced the launch of a public consultation process for the in-depth review of the ERC curriculum. In the view of the Minister, the ECR program has been the subject of much criticism from experts and various stakeholders in the education sector, which made it necessary to update the contents of the program.<sup>318</sup>

What should a new revised religious education program look like in 2023? Should it be subject-specific or taught through an interdisciplinary approach? Should we be teaching about religion or learning from religion? What does such a program require in terms of teacher training? Should we simply do away with religious education altogether and eliminate the risk for any uncomfortable conversations or legal battles? To answer these questions, we will turn to the ideas of international bodies and experts, which we will then contrast with the program that Quebec is proposing to implement.

### International Standards and Guidelines

While discussions in public schools in Canada are framed in the context of state neutrality, in the broader international context, these discussions are rooted in the discourse of human rights. The United Nations Charter and the Universal Declaration of Human Rights (hereinafter “UDHR”),

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<sup>318</sup> Ministry of Education, *Éthique et culture religieuse - Le ministre Jean-François Roberge annonce le début des consultations en vue d'une refonte du programme* (press release) Quebec, January 10th, 2020.

along with a number of subsequent UN covenants, conventions and declarations, make reference to “the right to freedom of thought, conscience and religion” (Article 18 UDHR) and the role of education in promoting respect for this right (Article 26.2 UDHR).<sup>319</sup>

The topic of religion education (hereinafter “**RE**”) was the focus of the International Consultative Conference on “School Education in relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination,” organised by the UN Office of the High Commissioner for Human Rights and held in Madrid in November 2001.<sup>320</sup> The “Final Document” produced by the conference underlined “the urgent need to promote, through education, the protection and the respect for freedom of religion or belief in order to strengthen peace, understanding and tolerance among individuals, groups and nations, and with a view to developing a respect for pluralism.”<sup>321</sup> It deemed that each State “should promote and respect educational policies aimed at strengthening the promotion and protection of human rights, eradicating prejudices and conceptions incompatible with freedom of religion or belief, and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief as well as the right to receive religious instruction inconsistent with his or her conviction.”<sup>322</sup> It also acknowledged that “freedom of religion or belief includes theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.”<sup>323</sup>

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<sup>319</sup> *Universal Declaration of Human Rights*, GA Res 217 (III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948).

<sup>320</sup> Bruce Grelle, “Neutrality in Public School Religion Education: Theory and Politics” in Lori G. Beaman & Leo Van Arragon, eds, *Issues in Religion and Education: Whose Religion* (Leiden: Brill, 2015) 231 at 235.

<sup>321</sup> *Ibid* at 236.

<sup>322</sup> *Ibid*.

<sup>323</sup> *Ibid*.

From this perspective, RE is viewed as a means of preparing students to become more responsible citizens in a world where multiple religious and non-religious worldviews coexist.<sup>324</sup> RE is understood as a “tool to transmit knowledge and values pertaining to all religious trends, in an inclusive way, so that individuals realize their being part of the same community and learn to create their own identity in harmony with identities different from their own.” As such, RE is distinguished from theology – which is defined as the formal study of the nature of God and of the foundations of religious belief – and contributes to the “wider framework of education as defined in international standards.”<sup>325</sup>

### The Toledo Guiding Principles

Despite the substantial diversity in the way that RE is conceptualised, practiced, and institutionalised both within and between various European countries, there have been several significant Europe-wide developments aimed toward the creation of a more universal, trans-national consensus on the rationale and guidelines for RE in public schools.<sup>326</sup> The most relevant initiative for the present discussion, which was undertaken by the Organization for Security and Cooperation in Europe (hereinafter “OSCE”), is the *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* (hereinafter the “**Toledo Guiding Principles**”), published in 2007.<sup>327</sup> The OSCE is an international organization, consisting of 57 participating states from

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<sup>324</sup> *Ibid.*

<sup>325</sup> *Ibid.*

<sup>326</sup> *Ibid.*

<sup>327</sup> *Ibid* at 237.

Europe, Central Asia and North America – including Canada – responsible for promoting security, stability and human rights, while fostering a culture of mutual respect and understanding.<sup>328</sup>

The Toledo Guiding Principles were born out of an intensive process and effort by the Advisory Council of the ODIHR<sup>329</sup> Panel of Experts on Freedom of Religion or Belief (hereinafter the “**Advisory Council**”), together with other experts and leading scholars from around the OSCE region from a variety of professional backgrounds, including policy makers, educators, lawyers, and representatives of inter-governmental and non-governmental organizations.<sup>330</sup> The aim of the Toledo Guiding Principles is to “contribute to an improved understanding of the world’s religious diversity and the growing presence of religion in the public sphere.”<sup>331</sup>

The rationale of the Toledo Guiding Principles is based on two core ideals: “first, that there is positive value in teaching, which emphasizes respect for *everyone’s* right to freedom of religion and belief, and second, that teaching *about* religions and beliefs can reduce harmful misunderstandings and stereotypes.”<sup>332</sup>

## Purpose

The main purpose of the Toledo Guiding Principles is to assist OSCE nations who choose to promote the study and knowledge about religions and beliefs in schools as a tool to enhance

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<sup>328</sup> *Who Are We?*, online: Organization for Security and Co-operation in Europe <<https://www.osce.org/whatistheosce>>

<sup>329</sup> Office for Democratic Institutions and Human Rights

<sup>330</sup> Simona Santoro, “Toledo guiding principles on teaching about religions and beliefs in public schools: executive summary” (2008) 19:1 *Intercultural Education* 83 at 83 [Toledo Executive Summary].

<sup>331</sup> *Ibid.*

<sup>332</sup> *Ibid.*

religious freedom.<sup>333</sup> The Toledo Guiding Principles adopt an educational approach focused on providing teaching *about* various religions and beliefs as opposed to instruction *in* a specific religion or belief, and put forward criteria that should be considered in teaching this subject.<sup>334</sup> It should be noted that the notion of “belief”, as it is used by the Toledo Guiding Principles, is defined as “deeply held conscientious convictions that are fundamental about the human condition and the world,”<sup>335</sup> and therefore non-religious worldviews are included in teaching about religions and *beliefs*.

The Advisory Council highlights a “growing consensus among educators that knowledge about religions and beliefs is an important part of quality education [...] that [...] can foster democratic citizenship, mutual respect, enhance support for religious freedom, and promote an understanding of societal diversity.”<sup>336</sup> Additionally, it emphasizes the “important responsibility of schools [...] to prepare young people for life in plural society and [to] promote mutual understanding by teaching respect for the rights of others,”<sup>337</sup> adding that “quality education about religions and beliefs may be an effective way to help avoid and address division and conflicts.”<sup>338</sup>

The Toledo Guiding Principles outline the following compelling reasons for teaching about religions and beliefs:

- “Religions and beliefs are important forces in the lives of individuals and communities and therefore have great significance for society as a whole. Understanding these

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<sup>333</sup> *Ibid.*

<sup>334</sup> *Ibid.*

<sup>335</sup> OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, *Guidelines for Review of Legislation Pertaining to Religion or Belief*, ODIHR (2004).at 8.

<sup>336</sup> ODIHR Advisory Council of Experts on Freedom of Religion or Belief, *Toledo Guiding Principles on Teaching about Religions and beliefs in Public Schools*, ODIHR (2007) at 19 [Toledo Guiding Principles].

<sup>337</sup> *Ibid.*

<sup>338</sup> *Ibid.*



convictions is necessary if people are to understand one another in our diverse societies, and also if they are to appreciate the significance of the rights that protect them.

- Learning about religions and beliefs contributes to forming and developing self-understanding, including a deeper appreciating of one's own religion or belief. Studying about religions and beliefs opens students' minds to questions of meaning and purpose and exposes students to critical ethical issues addressed by humankind throughout history.
- Much history, literature, culture and art is unintelligible without knowledge of religions and beliefs. Therefore, study about religions and beliefs is an essential part of a well-rounded education, as it broadens one's horizon and deepens one's insight into the complexities of both past and present.
- Knowledge of religions and beliefs can help promote respectful behaviour and enhance social cohesion. In this sense, all members of society, irrespective of their own convictions, benefit from knowledge about the religious and belief systems of others."<sup>339</sup>

### Founding Principles

The Toledo Guiding Principles are built on the premise that teaching about religions and beliefs should not be devotionally or denominationally oriented, and should instead strive for student awareness of religions and beliefs without suggesting their acceptance, denigrating them or imposing any particular view. The goal is to educate students about religions and beliefs "based on sound scholarship" which, for the Advisory Council, is a crucial precondition for giving students a fair and deeper understanding of the various faith traditions.<sup>340</sup>

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<sup>339</sup> *Ibid.*

<sup>340</sup> *Ibid* at 21.

## Pedagogical Approaches

The Toledo Guiding Principles touch on different viable pedagogical approaches in RE and provide for two effective strategies for teaching about religions and beliefs: teacher-centered and student-centered pedagogies.<sup>341</sup> The teacher-centered pedagogy sees the teacher as the expert who provides information to the students. In this approach, the teacher's knowledge of the content and the quality of the learning materials tend to be critical.<sup>342</sup> The student-centered pedagogy, on the other hand, sees the teacher as a facilitator in the students' learning process. Their knowledge of the content remains crucial, but interactive techniques – for example, discussion, debate, research, group work, project work, drama and presentation – occupy a prominent role.<sup>343</sup>

## Curricula

The Toledo Guiding Principles also provide recommendations on the underlying standards upon which RE curricula should be built:

“Teaching about religions and beliefs should be sensitive, balanced, inclusive, nondoctrinal, impartial, and based on human rights principles relating to freedom of religion or belief. This implies that considerations relating to the freedom of religion or belief should pervade any curricula developed for teaching about religions and beliefs. It is expected that curricula will adhere to recognized professional standards. This implies that, among other things, the information contained in the curricula is based on reason, is accurate, bias-free, up to date, and does not over-simplify complex issues. It also implies that curricula are age appropriate so that they are accessible to students. In addition, such curricula should, as much as possible, be comprehensive and pay particular attention to key historical and contemporary developments pertaining to issues of religion and belief. Societies are not static, and all communities undergo change. Thus, curricula should be sensitive to different interpretations of reality, this is often referred to in education as the principle of multi-perspectivity.”<sup>344</sup>

(my emphasis)

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<sup>341</sup> *Ibid* at 45.

<sup>342</sup> *Ibid*.

<sup>343</sup> *Ibid*.

<sup>344</sup> *Ibid* at 40 and 41.

In terms of curricula, the Advisory Council recognizes that an inter-disciplinary approach to the study of RE is as viable an option as the subject-specific approach that we have studied in our Quebec cases. This means that rather than dedicating an entire course to the study of RE, the subject matter may be taught through topics like the arts, literature, music, history, philosophy or citizenship education.<sup>345</sup> This is the approach that has been favoured in countries like France.<sup>346</sup>

### Learning Outcomes

The Toledo Guiding Principles suggest that the learning outcomes associated with teaching about religions and beliefs should aim to achieve the development of knowledge, attitude, and competencies.<sup>347</sup> One would expect the following learning outcomes:

- “attitudes of tolerance and respect for the right of individuals to adhere to a particular religion or belief system. This includes the right not to believe in any religious belief system;
- ability to connect issues relating to religions and beliefs to wider human rights issues (such as freedom of religion and freedom of expression) and the promotion of peace;
- core knowledge about the different religions and belief systems and knowledge of the variation that exists within all religions and beliefs, with reference to both the local/national context as well as to larger geographical areas;
- understanding that there are various legitimate ways to view history and historical developments (multi-perspectivity);
- Knowledge of the contexts associated with major historical events relating to different religions and belief systems;

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<sup>345</sup> *Ibid* at 43.

<sup>346</sup> Mireille Estevelezes, “Teaching About Religion in School in France” in M. de Souza et al, eds, *International Handbook of the Religious, Moral and Spiritual Dimensions of Education* (Dordrecht: Springer International Publishing, 2009) 477 at 477.

<sup>347</sup> Toledo Guiding Principles, *supra* note 336 at 49.

- An understanding of the importance of religious or philosophical beliefs in a person's life;
- Awareness of similarities and differences between different religions and beliefs;
- Ability, based on sound knowledge, to recognize and to question existing negative stereotypes about religious communities and their members;
- Ability to counteract, in a respectful and sensitive way, a climate of intolerance and discrimination.”<sup>348</sup>

## Teachers

Perhaps one of the most striking findings of the Toledo Guiding Principles is how exceptionally challenging it is to prepare teachers in the field of RE.<sup>349</sup> In its discussion on teacher education and qualifications, the Toledo Guiding Principles note that “even the best curriculum ideas and most enlightened policies will have little effect at the classroom level if teachers are incapable [...] of using the curriculum in an appropriate way in their work with students.”<sup>350</sup> The Advisory Council is of the opinion that this applies “with extra force to teaching about religions and beliefs because of the high demands such a curriculum place on a teacher's knowledge, attitudes and competencies.”<sup>351</sup> Given the global nature of society, the diversity found in today's classrooms and the potential for exclusion and conflict, a “commitment to freedom of religion or belief and sensitivity issues relating to human rights education and education for mutual respect and understanding should be a prerequisite for all future teachers of religions and beliefs.”<sup>352</sup>

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<sup>348</sup> *Ibid* at 49.

<sup>349</sup> W. Cole Durham, “Religion and the Organization for Security and Co-Operation in Europe” in Grace Davie & Lucien N. Leustean, eds, *The Oxford Handbook of Religion and Europe* (Oxford: Oxford University Press, 2021) 386 at 396.

<sup>350</sup> Toledo Guiding Principles, *supra* note 336 at 52.

<sup>351</sup> *Ibid*.

<sup>352</sup> *Ibid* at 54.

In terms of *who* should teach, the Toledo Guiding Principles state that an individual's personal beliefs – whether religious or non-religious – is not sufficient reason to exclude that person from teaching about religions and beliefs.<sup>353</sup> Rather, they state that “the most important considerations in this regard relate to professional expertise as well as to basic attitudes towards or commitment to human rights in general and freedom of religion or belief in the particular, rather than to religious affiliation conviction.”<sup>354</sup> Additionally, they suggest that teachers should have an understanding of “empathetic education” which attempts to arrive at a deeper understanding of others’ experiences and beliefs.<sup>355</sup> Finally, branching out further than RE teachers themselves, the Toledo Guiding Principles propose that “since teaching about religions and beliefs is interdisciplinary by its very nature, and since the subject touches upon human nature in a profound way, it can be highly beneficial for all teachers and staff in schools to have at least a basic understanding of teaching about religions and beliefs.”<sup>356</sup>

### Concluding Guiding Principles

In summary, the following key guiding principles were identified and proposed for consideration for teaching *about* religions and beliefs in OSCE schools:<sup>357</sup>

- (1) “Teaching about religions and beliefs must be provided in ways that are fair, accurate and based on sound scholarship. Students should learn about religions and beliefs in an environment respectful of human rights, fundamental freedoms and civic values.
- (2) Those who teach about religions and beliefs should have a commitment to religious freedom that contributes to a school environment and practices that foster protection of the rights of others in a spirit of mutual respect and understanding among members of the school community.

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<sup>353</sup> *Ibid* at 59.

<sup>354</sup> *Ibid*.

<sup>355</sup> *Ibid*.

<sup>356</sup> *Ibid*.

<sup>357</sup> Toledo Executive Summary, *supra* note 330 at 86.

- (3) Teaching about religions and beliefs is a major responsibility of schools, but the manner in which this teaching takes place should not undermine or ignore the role of families and religious or belief organizations in transmitting values to successive generations.
- (4) Efforts should be made to establish advisory bodies at different levels that take an inclusive approach to involving different stakeholders in the preparation and implementation of curricula and in the training of teachers.
- (5) Where a compulsory programme involving teaching about religions and beliefs is not sufficiently objective, efforts should be made to revise it to make it more balanced and impartial, but where this is not possible, or cannot be accomplished immediately, recognizing opt-out rights may be a satisfactory solution for parents and pupils, provided that the opt-out arrangements are structured in a sensitive and non-discriminatory way.
- (6) Those who teach about religions and beliefs should be adequately educated to do so. Such teachers need to have the knowledge, attitude and skills to teach about religions and beliefs in a fair and balanced way. Teachers need not only subject-matter competence but pedagogical skills so that they can interact with students and help students interact with each other in sensitive and respectful ways.
- (7) Preparation of curricula, textbooks and educational materials for teaching about religions and beliefs should take into account religious and non-religious views in a way that is inclusive, fair, and respectful. Care should be taken to avoid inaccurate or prejudicial material, particularly when this reinforces negative stereotypes.
- (8) Curricula should be developed in accordance with recognized professional standards in order to ensure a balanced approach to study about religions and beliefs. Development and implementation of curricula should also include open and fair procedures that give all interested parties appropriate opportunities to offer comments and advice.
- (9) Quality curricula in the area of teaching about religions and beliefs can only contribute effectively to the educational aims of the Toledo Guiding Principles if teachers are professionally trained to use the curricula and receive ongoing training to further develop their knowledge and competences regarding this subject matter. Any basic teacher preparation should be framed and developed according to democratic and human rights principles and include insight into cultural and religious diversity in society.

- (10) Curricula focusing on teaching about religions and beliefs should give attention to key historical and contemporary developments pertaining to religion and belief, and reflect global and local issues. They should be sensitive to different local manifestations of religious and secular plurality found in schools and the communities they serve. Such sensitivities will help address the concerns of students, parents and other stakeholders in education.”<sup>358</sup>

### Scholarly Commentary on the Toledo Guiding Principles

Danish scholar Tim Jensen is known for his promotion of a “separate scientific Study of Religion (RS) based religion education (RE) as a time-tabled, compulsory, and totally normal school subject, taught by teachers educated at study of religions departments of public universities.”<sup>359</sup> In other words, he sees the academic basis for the school subject to be the study of religions – known in many universities as “religious studies” – as it has developed and become institutionalized in universities around the world.<sup>360</sup> Jensen advocates for the value of an RS-based RE as “providing and acquiring analytical competences and skills enabling and empowering pupils, students, or citizens to rationally and critically ‘read’, analyze and discuss religious as well as non-religious discourses on religion, to critically reflect on religious practices, knowledge, power structures, means of authorization and legitimization of discourses.”<sup>361</sup>

In response to the Toledo Guiding Principles, Jensen cautions that such “problem-solving-RE” has an agenda and deals with religion and RE in a way that is difficult to reconcile with his RS approach

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<sup>358</sup> *Ibid.*

<sup>359</sup> Tim Jensen, “‘Jensen’s Scientific Approach’ to Religion Education” in *Center for Educational Policy Studies Journal*, vol 9, no 4 (Ljubljana: University of Ljubljana, 2019) 31 at 31.

<sup>360</sup> Tim Jensen, “RS based RE in Public Schools: A Must for a Secular State” in *Numen: International Review for the History of Religions*, vol 55, no 2-3 (Leiden: Brill, 2008) 123 at 126.

<sup>361</sup> *Ibid* at 135.

to RE.<sup>362</sup> He claims that the RE put forward by the Toledo Guiding Principles is aimed mainly at promoting human rights agendas, democracy, citizenship, and inter-cultural and inter-religious understanding and communication, and he identifies within them what he considers to be ‘pro-religion’ or ‘pro-religious’ attitudes and statements.<sup>363</sup>

“Though stressing that teaching about religion must be based on professional expertise and training, sound scholarship and professional standards, and that it must be accurate, objective, non-doctrinal, impartial, and bias-free, it reveals an understanding and attitude to religion that makes exactly such approaches and teaching very difficult – if at all possible.”<sup>364</sup>

Jensen’s major argument is that the RE proposed by the Toledo Guiding Principles lacks impartiality, and he points to the recurring promotion of the type of religion that coexists with and supports human rights, democracy and pluralism.<sup>365</sup> “No wonder that when discussing contents, it is recommended that sources from the religions that support peace, tolerance and human rights are highlighted. An impartial RE?”<sup>366</sup> Jensen insists that a proper RE course is not the place or vehicle “for such respect and privileging of religion.”<sup>367</sup>

Jensen is also of the opinion that “although RE may well imply that pupils also learn something *from* the religions taught *about*, it is, nevertheless, *not* the task for school authorities, teachers, to make it an explicit part of the aims nor in other ways to tell the pupils what exactly they are going to learn *from* religion.”<sup>368</sup> Instead, Jensen believes that it must be left to the students themselves to

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<sup>362</sup> *Ibid* at 132.

<sup>363</sup> *Ibid*.

<sup>364</sup> *Ibid*.

<sup>365</sup> *Ibid*.

<sup>366</sup> *Ibid*.

<sup>367</sup> *Ibid* at 133.

<sup>368</sup> *Ibid* at 137.



determine what it is, if anything, that they learn from the religions they encounter in RE – rather than being a specific aim of the educational program.<sup>369</sup>

Jensen also critiques the Toledo Guiding Principles' stated requirements for teachers, who not only need to dispose of the appropriate education but also the appropriate attitude.<sup>370</sup> He appears to associate this prerequisite with a certain level of subjectivity that is incompatible with his RS-focused RE which is "safely based on years of training in approaching religion in an objective, critical and pluralistic manner" with teachers acting as "experts in methodological atheism."<sup>371</sup>

Another critique which is worth mentioning comes from scholar of religious education, Liam Gearon. Like Jensen, Gearon criticizes the purpose and learning outcomes of the Toledo Guiding Principles, however, his motivations are vastly different. The question raised by Gearon is whether an emphasis on human rights and education for democratic citizenship politicizes religious education.<sup>372</sup> Gearon goes further and argues that "the development of the Toledo Guiding Principles represents not only the politicization but also the *securitization* of religious education."<sup>373</sup> Gearon critiques the work of the OSCE/ODIHR and accuses them of "bringing military and security concerns into the classroom,"<sup>374</sup> or as he calls it, "the counter terrorist classroom."<sup>375</sup>

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<sup>369</sup> *Ibid.*

<sup>370</sup> *Ibid* at 132, referring to references of teacher attitude in the Toledo Guiding Principles. See for example Toledo Guiding Principles at page 13, point (6).

<sup>371</sup> *Ibid* at 133.

<sup>372</sup> Robert Jackson, "Do the Toledo Guiding Principles Politicise Religious Education?" in Marius Timmann Mjaaland, ed, *Formatting Religion: Across Politics, Education, Media, and Law* (Abingdon, UK: Routledge, 2019) 127 at 135.

<sup>373</sup> *Ibid.*

<sup>374</sup> *Ibid.*

<sup>375</sup> Liam Gearon, "The Counter Terrorist Classroom: Religion, Education, and Security" (2013) 108:2 *Religious Education* 129.

In stark contrast to Jensen’s claim that the Toledo Guiding Principles are pro-religion and promote pro-religious attitudes and statements, Gearon considers any education *about* religion to be inherently secularist and anti-religious.<sup>376</sup> From Gearon’s perspective, the only authentic form of religious education is initiation into a particular religious way of life.<sup>377</sup>

Leading scholar and expert in the field of religion and education, Robert Jackson, played a key role in the development of the Toledo Guiding Principles and has responded to criticisms, including the ones outlined above. Jackson insists that the Toledo Guiding Principles were not produced with a clandestine agenda, and employees of the OSCE and ODIHR were never directly involved in the drafting, nor did they influence drafters or advisers in the process.<sup>378</sup> Jackson explains that the OSCE/ODIHR “acted as a facilitating agency, enabling an interdisciplinary group of experts to work together to produce a document aiming to guide policy makers and others in helping young people in publicly funded schools to understand something of the diversity of religion and belief that exists currently in the world.”<sup>379</sup> “This had a primary goal of developing *understanding* of religions or beliefs, seen as a key element (but not a sufficient condition) for promoting tolerance of difference.”<sup>380</sup>

As to Gearon’s commentary, Jackson affirms that the education *about* religions and beliefs presented in the Toledo Guiding Principles is not intended as an *alternative* to religious nurture

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<sup>376</sup> Jackson, *supra* note 372 at 135.

<sup>377</sup> *Ibid.*

<sup>378</sup> *Ibid* at 138.

<sup>379</sup> *Ibid.*

<sup>380</sup> *Ibid.*

and, more broadly as to both Gearon's and Jensen's points, adds that there was no suggestion that a study of religions and beliefs could have the *single aim* of increasing tolerance.<sup>381</sup>

Jackson recognizes the potential for serious criticism than a religious education program intended to "format religions in such a way as simply to develop a positive attitude towards them"<sup>382</sup> could invite. Still, he acknowledges the "vital importance of gaining accurate knowledge and understanding [...] from the religious insider's perspective,"<sup>383</sup> with "such knowledge and understanding [being] necessary, but not sufficient, conditions for guaranteeing an increase in tolerance."<sup>384</sup>

Looking further at Jackson's work *Signposts: Policy and practices for teaching about religious and non-religious world views in intercultural education* (hereinafter "**Signposts**"), which was inspired by and expands on the Toledo Guiding Principles in providing more specific guidance and recommendations for educators and policy makers, Jackson doubles down on his position, stating that "the form of intercultural education suggested can be complimentary to many forms of faith-based education, and could be adapted to various outward looking faith-based contexts."<sup>385</sup> His recommendations in *Signposts* advocate for the cultivation of positive relations with religious communities and emphasize the development of attitudes which facilitate inter-cultural and inter-religious understanding.<sup>386</sup> Ultimately, the aim of Jackson's recommendations is "to provide

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<sup>381</sup> *Ibid* at 139.

<sup>382</sup> *Ibid*.

<sup>383</sup> *Ibid*.

<sup>384</sup> *Ibid*.

<sup>385</sup> Robert Jackson, *Signposts: Policy and practices for teaching about religious and non-religious world views in intercultural education* (Strasbourg: Council of Europe Publishing, 2014) at 16.

<sup>386</sup> *Ibid*.

knowledge but also to cultivate sensitivity, reciprocity and empathy and to combat prejudice, intolerance, bigotry and racism.”<sup>387</sup>

### The Importance of Non-Religion in Education about Religion

The study of non-religion is an academic field on the rise.<sup>388</sup> Over the last 10 to 20 years, the scholarly discussion on what might be captured by the concept of non-religion has intensified as interest and research on the topic has increased.<sup>389</sup> In fact, the Department of Religious Studies at the University of Ottawa has set up a major international and interdisciplinary research project on the subject, *Nonreligion in a Complex Future* (hereinafter “NCF”). The NCF’s key research objectives include the development of new tools to measure and describe non-religion, analyze the social impact of non-religion and expand current discussions about religious diversity to include non-religion.<sup>390</sup> It focuses on five key areas: law, education, health, the environment, and migration. In each area, they ask how the non-religious sector challenges existing and taken-for-granted practices and cultures.<sup>391</sup> Lori Beaman, the NCF’s principal investigator, has provided a helpful list of what the “extremely diverse” non-religious category may include: “atheists, agnostics, the indifferent, the spiritual but not religious, the unaffiliated, the disaffiliated and humanists.”<sup>392</sup>

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<sup>387</sup> *Ibid.*

<sup>388</sup> Helge Årsheim, Anne Lundhal Mauritzen & Anne-Laure Zwillig, “Introduction – Non-religion in Late Modern Societies” in Anne-Laure Zwillig & Helge Årsheim, eds, *Nonreligion in Late Modern Societies: Institutional and Legal Perspectives* (Switzerland: Springer, 2022) 1at 2.

<sup>389</sup> *Ibid.*

<sup>390</sup> *The Project*, online: Nonreligion in a Complex Future <<https://nonreligionproject.ca/the-project/>>

<sup>391</sup> The aim of the project is “to examine the nature, shape and impact of nonreligion, and to build an evidence base from which to identify models for living well together in complex, diverse, and inclusive societies.

<sup>392</sup> Lori G. Beaman, “Nonreligion, Changing Religious Landscapes and Living Well Together” in Anne-Laure Zwillig & Helge Årsheim, eds, *Nonreligion in Late Modern Societies: Institutional and Legal Perspectives* (Switzerland: Springer, 2022) 15 at 16.

Prominent scholar of non-religion, Lois Lee, had initially described non-religion as “any position, perspective or practice which is primarily defined by, or in relation to, religion, but which is nevertheless considered to be other than religious.”<sup>393</sup> More recently, in *Recognizing the Non-Religious: Reimagining the Secular*, Lee defined non-religion more broadly stating that:

“non-religion is used to indicate not the absence of something (religion) but the presence of something (else), characterized, at least in the first place, by its relation to religion but nevertheless distinct from it. Non-religion is therefore any phenomenon – position, perspective, or practice – that is primarily understood in relation to religion but which is not itself considered to be religious.”<sup>394</sup>

The most important part of Lee’s latest definition is her recognition of non-religion as a phenomenon in itself, and her suggestion that non-religion is worthy of studying as a distinct object<sup>395</sup> – though always in relation to that which is religious. She holds that this can be achieved through the study of “philosophies and cultures developed in contradistinction from religious ones,”<sup>396</sup> which highlights non-religion as “something substantive beyond the mere rejection of religion.”<sup>397</sup>

Another distinguished scholar of religious studies, Ann Taves, reinforces this sentiment as she claims that “studying non-religion and secularity [is] long overdue, [and] incorporating it into ‘religious studies’ is a theoretically indefensible expansion of [it’s] disciplinary boundaries.”<sup>398</sup> Interestingly, Taves proposes that the study of religion be situated under a broader rubric of

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<sup>393</sup> Lois Lee, “Research Note: Talking about a Revolution: Terminology for the New Field of Non-religion Studies” in *Journal of Contemporary Religion*, vol 27, no 1, (UK: Routledge, 2012) 129 at 131.

<sup>394</sup> Lois Lee, *Recognizing the Non-Religious: Reimagining the Secular* (Oxford: Oxford University Press, 2015) at 32 at 32.

<sup>395</sup> Helge, *supra* note 388 at 4.

<sup>396</sup> Lee, *supra* note 394 at 32.

<sup>397</sup> Johannes Quack, Cora Schuh & Susanne Kind, *The Diversity of Nonreligion: Normativities and Contested Relations* (Abingdon, UK: Routledge, 2020) at 9.

<sup>398</sup> Ann Taves, “From religious studies to worldview studies” (2020) 50:1 *Religion* 137 at 138.

academic Worldview Studies that is both critical and scientific, in which both religion and non-religion would be included.<sup>399</sup> According to Taves, such Worldview Studies would rely on an evolutionary framework,<sup>400</sup> which presupposes a critical realist and constructionist approach, and would ground the humanities scientifically, thus overcoming the theoretical problems that currently exist within the study of religion.<sup>401</sup> “This focus on worldviews and ways of life would highlight the fundamental ‘big questions’ (What is the ultimate reality? Where did it come from? How did we get here? Where are we going? Etc.) that have traditionally interested philosophers and scholars of religion and the ways of life traditionally studied by anthropologists,”<sup>402</sup> which would ultimately “relieve scholars of the burden of distinguishing religion from nonreligion and allow [them] to focus on how people and groups characterize themselves.”<sup>403</sup>

While our understanding of non-religion continues to evolve, and its “specific features as a unit of analysis are far from settled”<sup>404</sup>, its place within any education about religion is undoubtedly critical, especially in Canada where more than one-third of the population identifies as non-religious.

### The Future of Religious Education in Quebec, or the Lack Thereof

In Quebec, the implementation of a new, revised program is slated for the 2023-2024 school year.

Indeed, students will no longer have the ERC program in their school timetables, but rather a

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<sup>399</sup> *Ibid* at 141.

<sup>400</sup> Taves’ evolutionary approach to studying worldviews is based on an understanding that worldviews develop and change over time and shape individual experiences and behaviours.

<sup>401</sup> *Ibid*.

<sup>402</sup> *Ibid* at 144.

<sup>403</sup> *Ibid*.

<sup>404</sup> Helge, *supra* note 388 at 3.

course called Culture and Citizenship in Québec (hereinafter “CCQ”). The course will be offered through all six years of elementary school as well as four of the five years of high school, with the exception of Secondary 3.<sup>405</sup> During the 2022-2023 school year, draft programs were rolled out as pilot projects, with teachers volunteering to participate. It was also announced that teacher training on the different aspects of the program would be gradually provided starting in January 2023.<sup>406</sup>

The reactions from stakeholders have been mixed. In a press-release from January 2023, the *Fédération des syndicats de l'enseignement* (hereinafter the “FSE-CSQ”) – which represents some 87,000 teachers in its mission to promote, develop and defend the professional, social and economic interests of its members<sup>407</sup> – criticized the education minister for rushing the implementation of the CCQ program, after the pilot project revealed a significant lack in teaching materials and resources provided by the minister to assist teachers in preparing their learning materials.<sup>408</sup> FSE-CSQ president Josée Scalabrini accused the government of favouring ticking off an electoral promise rather than putting in place the conditions for the successful implementation of the course.<sup>409</sup> The FSE-CSQ also denounced the promised “teacher training” as being nothing more than info sessions.

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<sup>405</sup> *Culture and Citizenship in Québec Program*, online: Ministère de l'Éducation <<http://www.education.gouv.qc.ca/en/parents-and-guardians/references/revision-ethics-religious-culture-program/>> [CCQ Revision].

<sup>406</sup> *Ibid.*

<sup>407</sup> *Histoire et mission*, online: Fédération des syndicats de l'enseignement CSQ <<https://fse.lacsq.org/la-fse/histoire-et-mission/>>

<sup>408</sup> Fédération des syndicats de l'enseignement CSQ, News release: “Implantation du cours Culture et citoyenneté québécoise - À quoi bon écouter l'expertise terrain?” (18 January 2023) online: Newswire <<https://www.newswire.ca/fr/news-releases/implantation-du-cours-culture-et-citoyennete-quebecoise-a-quoi-bon-ecouter-l-expertise-terrain--831314140.html>>.

<sup>409</sup> *Ibid.*

The program revision began promptly in 2020 with a series of online public consultations. In this process, an estimated 28,000 respondents answered questions relating to eight proposed themes:

- Citizen participation and democracy;
- Legal education;
- Green citizenship;
- Sexuality education;
- Personal development and interpersonal relationships;
- Ethics;
- Digital citizenship; and
- Societal culture.

This was done in parallel to special consultations with specific partners – including indigenous organisations, teacher associations, parents associations, school board associations and others – who were invited to file memoirs commenting on the aforementioned themes.

The new CCQ program has yet to receive ministerial approval but certain details about the proposed program have been made public. We know that the program will be organized around three main topics:

- 1) Culture, to enable students to understand culture in Québec, its foundations, evolution, ambassadors and major works;
- 2) Citizenship in Québec, where the fundamental values and principles of civic life will be explored, as well as the open questions of our times, such as freedom of expression, state secularism, gender equality, representations of sexuality in the public space, racism, sexual and gender diversity, the use of social media and sexual consent; and



3) Dialogue and critical thinking, ideas which transcend the program.<sup>410</sup>

It is apparent from this alone that, unlike the ERC program, the CCQ is in no way intended to be a course on religious education. In fact, any notion of religion appears to be almost completely evacuated, with the exception of the mention of state secularism.

However, “state secularism” has been known to be a slippery slope in this province. While it’s name implies a theologically neutral stance relying on ideas of inclusive democratic processes and policies,<sup>411</sup> the effects of legislation founded on “state secularism” in Quebec have long been questioned. Let’s take the example of the *Act respecting the laicity of the State*,<sup>412</sup> commonly referred to as Bill 21 (hereinafter “**Bill 21**”), which seeks to formally affirm Quebec as a “lay State”<sup>413</sup> based on the principles of separation of state and religions, religious neutrality of the state, equality of all citizens and freedom of conscience and religion.<sup>414</sup>

The intent of the legislator is further reflected in the text of the preamble, which states that “it is important that the paramountcy of State laicity be enshrined in Québec’s legal order” and “a stricter duty of restraint regarding religious matters should be established for persons exercising certain functions.” The law goes on to prohibit the wearing of religious symbols by people occupying certain public positions, including principals, vice principals and teachers of public educational

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<sup>410</sup> CCQ Revision, *supra* note 405.

<sup>411</sup> Cathy Byrne, *Religion in Secular Education: What, in Heaven’s Name, are we Teaching our Children?* in Lori G. Beaman & Peter Beyer, eds, *International Studies in Religion and Society*, vol 21 (Leiden: Brill, 2014) at 33.

<sup>412</sup> *Act respecting the laicity of the State*, RSQ c L-0.3.

<sup>413</sup> *Act respecting the laicity of the State*, RSQ c L-0.3, s 1.

<sup>414</sup> *Ibid*, s. 2.

institutions.<sup>415</sup> Furthermore, Bill 21 applies notwithstanding Section 2(a) of the Canadian Charter,<sup>416</sup> which is in itself a recognition of an intentional state violation of the most fundamental human rights within our society, the whole in the name of state secularism. Bill 21 has been unsuccessfully contested before the courts. While the Superior Court of Quebec found the law to have “cruel” and “dehumanizing” consequences which disproportionately impact Muslim women,<sup>417</sup> it was forced to allow the law to stand due to the government's use of the notwithstanding clause. The Court also noted that it could not conclude that the ban on wearing religious symbols contributes to state secularism in its formal sense.<sup>418</sup>

A recent study conducted by the Association for Canadian Studies found that while neutrality was the most central value associated with Bill 21, there is a “prevalent negativity toward non-Christian religious symbols that drives support for law 21”:

“Implicit in the imposition of governmental restrictions on religious symbols, no matter how mild, is the notion that the behaviour being limited is potentially harmful and that the groups whose practices are being limited need to be held in check.”<sup>419</sup>

Topics of state secularism in the context of public education, therefore, cannot automatically be assumed to fall within the understanding of state neutrality explained in the Canadian cases studied above.

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<sup>415</sup> *Ibid*, s 6.

<sup>416</sup> *Ibid*, s 34.

<sup>417</sup> *Hak c Procureur général du Québec*, 2021 QCCS 1466 at para 67 and 69.

<sup>418</sup> *Ibid* at para 1109.

<sup>419</sup> Association for Canadian Studies, Law 21: Discourse, Perceptions & Impacts by Miriam Taylor (Association for Canadian Studies, May-June 2022).

Digging a little bit deeper into the descriptions of the eight themes provided during the consultation process, the last one does mention “religious beliefs” as a topic that *could* be discussed in teaching about societal culture:

“The culture of societies relates to all the knowledge, know-how, traditions and customs that condition individual behavior within societies. It allows the individual to understand how societies evolve, to recognize cultural differences and to develop attitudes and behaviors respectful and tolerant of them.

Through this theme, the student can be informed, for example, about:

- religious beliefs;
- cultural, economic and political aspects, which may differ from one culture to the other;
- the need that within a society, the difference between individuals should be considered wealth;
- the challenges associated with the integration of individuals and the acceptance of difference.”<sup>420</sup>

(my translation and emphasis)

Again, we must proceed with caution when associating societal culture with religious beliefs and avoid transforming that which is religious into culture and heritage.<sup>421</sup> The proposition that the majoritarian religion is part of a country’s heritage and culture could be an indication that the government is finding ways around religious neutrality, which in turn may lead to the violation of the religious freedoms of those in the minority religions and the non-religious.<sup>422</sup> Still, it is premature to conclude that this is in fact the direction that the CCQ program is taking.

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<sup>420</sup> Commission des droits de la personne et des droits de la jeunesse (March 2020) *Mémoire – Consultations sur le programme d’études éthique et culture religieuse* [CDPDJ Mémoire].

<sup>421</sup> Beaman, *supra* note 171 at 20.

<sup>422</sup> *Ibid.*

In its memoire submitted during the special consultation process in 2020, the *Commission des droits de la personne et des droits de la jeunesse* (hereinafter the “CDPDJ”) highlighted the importance that religion continue to be a topic within the new CCQ program. It emphasized that religious beliefs should be presented in a non-confessional way, and that schools should transmit sociological, anthropological, historical, philosophical, artistic, etc., knowledge about the “religious phenomenon” as a way of preparing young Quebecers for life in a pluralistic society.<sup>423</sup> The CDPDJ recognized religion as a “contemporary social fact” and, while it has the potential to create tensions or even polarisation, a factual and objective understanding of the religious phenomenon may contribute to encouraging students’ openness to others and diffusing certain societal tensions surrounding the subject of religion in Quebec.<sup>424</sup> In closing, the CDPDJ stressed the importance that “religious beliefs” include discussions about beliefs of a secular nature, such as atheism and agnosticism.<sup>425</sup>

And yet, the draft elementary and secondary CCQ curricula released by the Quebec government in 2022 make little mention of religious education topics. At the elementary level, the draft program makes absolutely no mention of religions whatsoever.<sup>426</sup> At the secondary level, Secondary IV students will touch on religious culture during the “Culture and Symbolic Productions” component of the course while Secondary V students will touch on religions and spiritualities in the “Search for Meaning and World Views” portion of the program.<sup>427</sup> It is

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<sup>423</sup> CDPDJ Mémoire, *supra* note 420 at 68.

<sup>424</sup> *Ibid* at 69.

<sup>425</sup> *Ibid* at 73.

<sup>426</sup> Quebec, Ministère de l’Éducation, *Draft program – Culture and Citizenship in Quebec: Version for the elementary school pilot projects* (Québec: Ministère de l’Éducation, 2022).

<sup>427</sup> Quebec, Ministère de l’Éducation, *Draft program – Culture and Citizenship in Quebec: Version for the secondary school pilot projects* (Québec: Ministère de l’Éducation, 2022) at 29 and 31.

unsurprising then that the draft curricula make absolutely no reference to the ever-prominent question of non-religion either.

### Proposed Way Forward: A “Mini-Science-of-Religion”

The non-compulsory nature of the topic of religious beliefs in the CCQ program as well as its near inexistence in the draft curricula are concerning, to say the least. In an increasingly multicultural, religiously diverse society, how can the government justify pushing education about religion to the sidelines? My proposition here is that the need is more pressing than ever before for non-confessional education about religion and non-religion in Quebec schools.

In this regard, I subscribe to Jensen’s position of the need for a scientific study of religion in public schools as a compulsory, subject-specific course taught by teachers educated in the field of religious studies.<sup>428</sup> He dubs this approach a “mini-science-of-religion”.

In 2019, Jensen published the following “Programmatic Fundamentals for RE”,<sup>429</sup> which I believe ought to serve as the foundational argument for the type of religious education that modern, liberal, and pluralistic states like Quebec should be striving to implement:

- (1) “Religion is a human, cultural, social and historical phenomenon.
- (2) Granted that scientifically based knowledge of humankind, history (evolution too), nature, culture, social formation, identity formation, etc. is considered essential and valuable knowledge, then scientifically based knowledge of religion(s) must be considered equally essential and valuable.

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<sup>428</sup> Jensen, *supra* note 359 at 31.

<sup>429</sup> *Ibid* at 33.

- (3) Religion(s) can, like other historical, social, and cultural phenomena, be scientifically researched, analyzed, interpreted, and explained, – and the scientific research results can be ‘translated’ into teaching, at both the university and public-school levels.
- (4) The production of valuable scientifically based knowledge of religion(s), leading to more and more qualified knowledge of humankind, history, evolution, culture, etc., can and must engage a variety of scholars from the natural, social, and human sciences. However, specialist knowledge of religion(s) has for more than a century been pursued by scholars at specific university departments for the study of religion(s). These departments are still a *sine qua non* for a concerted and strategic scientific study of religion.
- (5) If scientifically produced knowledge of humankind, nature, and culture, including religion, is considered to be of scientific and cultural value and, therefore, to be funded by the state, then this state-funded research and knowledge must be shared with the public at large and not kept as a ‘professional secret’ among scholars within academia.
- (6) For a state to ensure that this valuable knowledge is shared with society at large, it must ensure that public school education reflects and transmits the knowledge produced at the public universities.
- (7) Though knowledge of religion(s) can and must be sought and produced by a series of sciences and also taught and touched upon in school subjects such as history, literature, and in the natural and other social sciences subjects, a specific time-tabled compulsory and totally normal school subject – study-of-religion(s)-based religion education (RE) – taught by teachers educated at the study-of-religions departments must be established. Only in this way can the state ensure that teaching about religion(s) in school is as scientifically based as is the teaching of other school subjects.
- (8) By providing a scientific study of religion(s) at public universities and a study-of-religion(s)-based RE in public schools, the state, moreover, provides for a second-order analytical-critical discourse on religion, a second-order discourse that may, arguably, be seen as crucial to the well-being and well-functioning of an open, secular (not ‘secularist’), pluralist and democratic society.
- (9) Moreover, the RE thus offered can help provide citizens at large with ‘general education’, as well as with analytical and communicative competences needed for the skilled execution of various professions in today’s society and world. Such competences are often also aimed at in so-called ‘citizenship education’.

- (10) The contents of the public school RE are to reflect, pedagogically and didactically tailored to the various age groups, the public university scientific study-of-religions programmes and contents. It is to be a ‘mini’ (or ‘school’) study-of-religion(s).”<sup>430</sup>

This approach aligns seamlessly with the Quebec concepts of *laïcité* and state neutrality while remaining consistent with modern principles of education. A truly pluralistic and secular state has every reason to support, and encourage, a secular scientific study of religion. As Armin W. Geertz has defined in his contribution to *Secular Theories on Religion*:

“the secular study of religion is understood [...] to mean the non-sectarian, non-religious study of religion. It is not necessarily an atheistic approach. It simply chooses to interpret, understand and explain religion in non-religious terms. It confines itself to analytical models grounded in a view of the world based on the insights and achievements of the natural sciences. The study of religion, obviously, is not a natural science. It applies methods, theories and models developed in the human and social sciences: history, sociology, linguistics, psychology, anthropology, ethnography and philosophy. It is further characterized by a comparative interest in all religions throughout human history. But its view of the world is secular and humanistic.”<sup>431</sup>

While perhaps an “uphill, uphill, uphill” battle,<sup>432</sup> it is difficult to see the downside to teaching our children about “today’s religion(s) and contemporary developments and transformations of religion(s), and whatever relations between religion and politics, religion and non-religion, religion and the secular, religion and human rights, and so on in [this] country and in the world at large.”<sup>433</sup>

The state should support an RE curriculum that instills the skills, knowledge and competences that

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<sup>430</sup> *Ibid.*

<sup>431</sup> Armin W. Geertz, “Analytical Theorizing in the Secular Study of Religion” in Tim Jensen & Mikael Rothstein, eds, *Secular Theories on Religion: Current Perspectives*, (Copenhagen: Museum Tusculanum Press, 2020) 21.

<sup>432</sup> Tim Jensen, “A Study-of-Religions(s) Based RE: A Must for All Times – Post modern, Post-secular or Not!” in Olof Franck & Peder Thalen, eds, *Religious education in a post-secular age: case studies from Europe* (Cham: Palgrave Macmillan, 2021) 179 at 194.

<sup>433</sup> *Ibid* at 195.

will allow students to critically analyze the abovementioned dynamics, not only as critical and competent RE students but also as critical and competent citizens in a multicultural society.<sup>434</sup>

It should be acknowledged that, while Jensen's approach lines up closely with Wiebe's perspective in viewing religious studies as a scientific enterprise, this position is not without considerable opposition. Jensen "subscribes to a concept of a kind of 'history' or 'study' of religion(s) that includes a wide range of historical, comparative, critical-analytical, sociological, psychological etc. approaches to religion as a human phenomenon (and theoretical object) and to religions as more or less observable historical, social and cultural traditions."<sup>435</sup> This conception of religious studies can be seen as importing a normative element insofar as it is viewed as encouraging the emancipation of students from narrow confessional positions. More broadly, the Wiebe and Jensen approaches are contested for their reductionism and lack of appreciation for other methodological approaches in the field.

As anthropologist Clifford Geertz has expressed:

"One of the main methodological problems in writing about religion scientifically is to put aside at once the tone of the village atheist and that of the village preacher, as well as their more sophisticated equivalents, so that the social and psychological implications of particular religious beliefs can emerge in a clear and neutral light. And when that is done, overall questions about whether religion is "good" or "bad," "functional" or "dysfunctional," "ego-strengthening" or "anxiety-producing," disappear like the chimeras that they are, and one is left with particular evaluations, assessments, and diagnoses in particular cases."<sup>436</sup>

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<sup>434</sup> *Ibid.*

<sup>435</sup> Jensen, *supra* note 359 at 33, n 2.

<sup>436</sup> Clifford Geertz cited in Robert A. Orsi, "Introduction" in Robert A. Orsi, ed, *The Cambridge Companion to Religious Studies* (Cambridge: Cambridge University Press, 2012) 1 at 13.



Prominent scholar in the field of religious studies, Robert Orsi, who is known for his contributions to the study of lived religions, has expressed:

“Many of us in the discipline of religious studies have come to understand its subject as the work of men and women in particular times and places engaging the circumstances of their lives in the company of their special beings (saints, gods, bodhisattvas , spirits) and of each other; the memory and ongoing effort to understand and communicate these experiences (in texts, songs, material objects, visions, art, and stories); the implication of religious idioms in the making and contesting of various forms of power; and the development of such practices, narratives, and understandings over time. What is compared are not religious traditions, but occasions of working on the world in the idioms of religion – in times of social crises, within families, in the domains of power and politics, when contending with illness and death, in marking life transitions, and so on – in order to raise questions and develop illuminating perspectives on human life itself.”<sup>437</sup>

In this sense, Orsi insists that “religions are lived, and it is in their living, in the full and tragic necessity of people’s circumstances, that we encounter them, study and write about them, and compare them, in the full and tragic necessity of our circumstances.”<sup>438</sup> In short, Orsi’s living religions approach emphasizes the importance of understanding the different ways in which religious practices and beliefs are lived and experienced by individuals in their everyday lives.

Geertz and Orsi would surely consider Jensen to be a more sophisticated equivalent of the village atheist. The “mini-science-of-religion” approach put forth by Jensen, while susceptible to criticisms of being reductionist or lacking appreciation for other methodological approaches in the field, needn’t entail a diminishment of, or patronizingly emancipatory approach to, the study of religions. In fact, I would argue that including this “lived religion” perspective could be an important component within the historical and social scientific perspective of religious studies.

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<sup>437</sup> *Ibid.*

<sup>438</sup> *Ibid.*

## Conclusion

The face of religion in Canada is changing at a rapid pace, as evidenced by the 2021 Canadian Census. The results of the “ethnocultural and religious diversity” survey revealed a decline in Christian affiliation, increased diversity among the minority religions, and a drastic increase in the fastest-rising category, non-religion. Not only is religious affiliation decreasing, so is religiosity – that is, the ways in which Canadians engage with religion and the importance they place on it. This phenomenon is most prominent amongst the younger generations of Canadians and significantly more prevalent in Quebec than anywhere else in the country.

Despite the difficulties in defining religion, the courts have made clear that non-religion must be included. The importance of understanding the boundaries of religion finds its relevance in determining what is protected by the freedom of conscience and religion, as constitutionally entrenched at Section 2(a) of the Canadian Charter. In essence, the freedom of religion is the right to entertain such religious beliefs as a person chooses, without coercion, constraint or fear of reprisal.<sup>439</sup> However, as with any individual right, it is not unlimited and must be justified in a free and democratic society. Furthermore, no infringement of a person’s freedom of religion will be recognized for a trivial or insubstantial interference. In other words, the freedom of religion is not absolute.

In our pluralistic society, it is no surprise that religious beliefs and conducts sometimes clash, whether it be in the private sphere as in *Amselem*, or in the public sphere as in *Saguenay*. In the latter, the matter is dealt with through the concept of state neutrality. It is well-established in

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<sup>439</sup> *Big M*, *supra* note 124 at para 94.

Canada that the state owes a duty of neutrality with regard to religion – it must base its actions on non-religious grounds and must refrain from interfering with religious practices unless required by the public interest. The state must act as a neutral intermediary between the different denominations and between those denominations and society as a whole.

In Quebec's unique historical context, the state and the Church were for a long time closely intertwined. The popular rejection of this situation led to the Quiet Revolution of the 1960s, which has been qualified as the “de-Christianization” of society and which can be seen as a major turning point towards the secularization of our institutions and, most importantly, of the education system. As the educational deconfessionalization process reached its culmination in the late 1990s, there was a demonstrated governmental awareness of the shifting social and religious landscape in Quebec and the need for schools not to dismiss religious education altogether, but rather to recognize from a critical view point the contributions of the different religions in terms of culture, values and humanism. This led to the development and implementation in 2008 of the ERC program in schools across the province, which provided an impartial, secular approach to teaching about all religions – including non-religious beliefs – from an objective perspective.

It wasn't long before the ERC program became the subject of legal challenges which required the court system to consider its constitutionality. The first case of its kind to be heard by the Supreme Court of Canada was the S.L. case, which dealt with the ERC program in the context of a public school. The country's highest tribunal held that the ERC program did not infringe the students' or their parents' freedom of religion under Section 2(a) of the Canadian Charter since it is simply a comprehensive presentation of a variety of religions without obliging adherence to any of them. The Court explained that to hold differently would amount to “a rejection of the multicultural

reality of Canadian society” and would “ignore the Quebec government’s obligations with regard to public education.”<sup>440</sup> The Court found that it is the school’s duty to introduce students to a wide range of religions, while it falls upon the parents and religious leaders to ensure that children understand the religious precepts of the faith to which they belong.<sup>441</sup>

The only other ERC challenge to be heard by the Supreme Court of Canada is the Loyola case, in which the court took care to distinguish the facts from S.L., as it was this time presented with a private, Catholic high school. In this case, the Court recognized that the education minister’s decision forcing it to teach the Catholic religion – “the very faith that animates its character”<sup>442</sup> – from a neutral perspective constituted an infringement of the school’s freedom of conscience and religion. Where both cases converge is on the understanding by the Supreme Court that a position of state neutrality is essential to preserving the constitutional freedom to believe or not to believe.

While S.L. and Loyola are the only cases to deal with Quebec’s ERC program, other cases from the rest of Canada have put forward interesting and relevant analyses of freedom of religion infringement claims in the context of public education.

In Ontario, the Court of Appeals concluded that a religious education curriculum taught from a largely fundamentalist Christian stance had the intent to permit the Christian indoctrination of school children and therefore constituted an unjustified infringement of Section 2(a) of the Canadian Charter.<sup>443</sup> The same court in a subsequent case found that opening or closing each

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<sup>440</sup> *S.L. SCC, supra note 113* at para 40.

<sup>441</sup> *Ibid* at para 67-68.

<sup>442</sup> *Loyola SCC, supra note 231* at para 61.

<sup>443</sup> *CCLA, supra note 266*.

school day with religious exercises – namely reading of the Scriptures and recitation of the Lord’s Prayer – was also an infringement of Section 2(a) as it imposed Christian observance on non-Christian students and religious observances on non-believers.<sup>444</sup> In both of these cases, the Court of Appeals found that a right of exemption was insufficient in eliminating pressure and compulsion placed on the students. Almost three decades later, the same court reenforced the notion that non-denominational public schools have a “mandate to provide an open, accepting and inclusive educational experience for all children.”<sup>445</sup>

In a case out of British Columbia, the Supreme Court of Canada found that a school board resolution refusing to authorize the use of books depicting same-sex couples needed to be set aside, as it was based on an exclusionary philosophy and failed to uphold the statutory principles of secularism and tolerance “by letting the religious views of a certain part of the community trump the need to show equal respect for [others].”<sup>446</sup> Finally, in the most recent appeal court decision on the subject, the Court of Appeals of British Columbia found that exposing children to demonstrations of indigenous cultural practices did not compromise the students’ or their parents’ freedom of religion and that a distinction needed to be made between students “learning about different beliefs and being made to participate in spiritual rituals.”<sup>447</sup>

It is interesting to observe that, although these decisions come out of different jurisdictions at different points in time and in relation to different educational curricula, there remains a common, underlying principle that public schools have a responsibility – flowing from the duty of state

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<sup>444</sup> *Zylberberg*, *supra* note 287.

<sup>445</sup> *Wentworth*, *supra* note 298 at para 36.

<sup>446</sup> *Chamberlain*, *supra* note 293 at para 71.

<sup>447</sup> *Servatius BCSC*, *supra* note 139 at para 107 confirmed by BCCA.

neutrality – to expose children to realities and viewpoints that may differ from those of their immediate family environment but that are ever-present in Canadian society.

This aligns with the Toledo Guiding Principles’ core ideal that teaching about religion can reduce harmful misunderstandings and stereotypes,<sup>448</sup> and contributes to the consensus that knowledge about religions and beliefs is an important part of quality education.<sup>449</sup> It is also compatible with Hinnells’ idea that the study of religion is key to understanding other cultures and critical to understanding one another – whether the student is religious or not.

It is therefore difficult to conceive that the Quebec government should seek to so minimize the place of religion in its educational curriculum, especially when its consultations revealed the importance of factual and objective education about religion remaining part of the new program. The advantages of education about religions are also clearly identified in the Toledo Guiding Principles, which state that all members of society, irrespective of their own convictions, benefit from the knowledge of the religious and belief systems of others.

What is needed is an approach to religious education that, while respecting religious freedom, is based on sound scholarship and at the forefront of our academic understanding of religious studies, that is, “an objective, scientific, non-biased study of religion”<sup>450</sup> with the aim of “fostering critical understanding of religious traditions and values as opposed to a religious exercise designed to nurture faith.”<sup>451</sup>

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<sup>448</sup> Toledo Executive Summary, *supra* note 330 at 83.

<sup>449</sup> Toledo Guiding Principles, *supra* note 336 at 19.

<sup>450</sup> Wiebe, *supra* note 12 at 126.

<sup>451</sup> Wiebe, *supra* note 12 at 127.

A “mini-science-of-religion” taught as a regular school course – much like math, geography or chemistry – requires teachers with formal education in the subject matter, whose role it is to interpret and “translate” scientific knowledge of religion for a school-level audience. Insofar as a factual understanding of religions contributes to an understanding of other subjects like art, history and philosophy, religious education therefore provides students with a general education that will serve them in all facets of their lives and help them become competent and – as a hopeful side effect – more tolerant members of a multicultural and religiously diverse society.

Such an approach is coherent with the state’s duty of neutrality, which commands that it base its actions (including state-mandated educational curricula) on non-religious grounds,<sup>452</sup> that it refrain from encouraging or discouraging any form of religious conviction,<sup>453</sup> and that it show respect for all postures towards religion, including that of having no religious beliefs whatsoever.<sup>454</sup>

Furthermore, this proposed “mini-science-of-religion” respects religious freedom as protected by the Canadian and Quebec Charters and as interpreted by the courts – as it is well established that being taught about different religious and non-religious beliefs neutrally is not an infringement of the freedom of religion – and respects modern principles of education as it “designates an enterprise legitimated by the academy,”<sup>455</sup> measuring up to the “criteria of scientific study in the other university disciplines.”<sup>456</sup>

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<sup>452</sup> *S.L. SCC, supra note 113* at para 32.

<sup>453</sup> *Saguenay, supra note 167*, para 78.

<sup>454</sup> *S.L. SCC, supra note 113* at para 32.

<sup>455</sup> *Wiebe, supra note 12* at 139.

<sup>456</sup> *Ibid.*

The main challenge I foresee with implementing such an RS based RE in Quebec's education system is not a legal one. Beyond the internal challenges and differing perspectives that we've identified and that are known to exist within the field of religious studies, I expect that one of the greatest hurdles would be tailoring the curriculum, pedagogically and didactically, to elementary and high school aged students. Religion, as we've seen, can be a complex and highly personal subject and I anticipate that this is all the more true when dealing with children whose powers of understanding and critical reasoning are still developing. At the same time, religion is too important for us to remain ignorant about it. Not only do religions and beliefs influence the very meanings we find in our lives, but they also have important social, political, and legal implications. Despite the difficulties an RS based RE or "mini-science-of-religion" at the school level may present, this would not be an impossible task and, perhaps, could serve as a worthy enterprise uniting scholars of religious studies for a common cause, further advancing critical knowledge about the world and its religions beyond the walls of higher education institutions.



## BIBLIOGRAPHY

### JURISPRUDENCE

*Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37

*Blackwater v Plint*, 2005 SCC 58

*Board of Education v. Allen*, 392 U.S. 236 (1968)

*Canadian Civil Liberties Assn. v Ontario (Minister of Education)* (1990), 71 O.R. (2d) 341

*Chamberlain v Surrey School District No. 36*, 2002 SCC 86

*Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48

*E.T. v Hamilton-Wentworth District School Board*, 2017 ONCA 893

*Hak c Procureur général du Québec*, 2021 QCCS 1466

*Hodkin & Anor, R (on the application of) v Registrar-General of Births, Deaths and Marriages*, [2013] UKSC 77

*Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2015 BCCA 352

*Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54

*Loyola High School v Courchesne*, 2010 QCCS 2631

*Loyola High School v Quebec (Attorney General)*, 2015 SCC 12

*Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16

*Québec (Procureur général) v Loyola High School*, 2012 QCCA 2139

*R. v Big M Drug Mart Ltd*, [1985] 1 SCR 295

*R. v Oakes*, [1986] 1 SCR 103

*R v Registrar, ex parte Segerdal*, [1970] 2 QB 697

*R.C. v District School Board of Niagara*, 2013 HRTO 1382

*Re South Place Ethical Society*, [1980] 1 W.L.R. 1565

*Servatius v Alberni School District No. 70*, 2020 BCSC 15

*Servatius v Alberni School District No. 70*, 2022 BCCA 421

*Simoneau c Tremblay*, 2011 QCTDP 1

*S.L. c Commission scolaire des Chênes*, 2009 QCCS 3875

*S.L. v Commission scolaire des Chênes*, 2012 SCC 7

*Syndicat Northcrest v Amselem*, 2004 SCC 47

*Zylberberg v Sudbury Board of Education* (1988), 65 O.R. (2d) 641

## LEGISLATION

*Acte concernant la charge de Ministre de l'Instruction publique*, 1867-68, 31 Vict, c 10.

*Acte pour amender de nouveau la loi concernant l'instruction*, SQ 1875, 39 Vict, c 15.

*Act respecting the laicity of the State*, RSQ c L-0.3.

*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

*Charities Act 2011* (UK), c 25, s. 3(2)(a).

*Charter of Human Rights and Freedoms*, RSQ c C-12.

*Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, preamble, reprinted in RSC 1985, App II, No 5.

*Education Act*, RSO 1980, c 129.

*Education Act*, RSQ c I-13.3.

*Equality Act 2010* (UK), c 15, s. 10(1).

*Human Rights Code*, RSO 1990, c H.19.

*Regulation respecting the application of the Act respecting private education*, RSQ c E-9.1, r 1.

## SECONDARY SOURCES

Alles, Gregory. “The Study of Religions: the last 50 years” in John R. Hinnells, ed, *The Routledge Companion to the Study of Religion* 2nd ed (Abingdon, UK: Routledge, 2010) 39.

Årsheim, Helge. Anne Lundhal Mauritzen & Anne-Laure Zwillling, “Introduction – Non-religion in Late Modern Societies” in Anne-Laure Zwillling & Helge Årsheim, eds, *Nonreligion in Late Modern Societies: Institutional and Legal Perspectives* (Switzerland: Springer, 2022) 1.

Association for Canadian Studies, Law 21: Discourse, Perceptions & Impacts by Miriam Taylor (Association for Canadian Studies, May-June 2022).

Banakar, Reza & Travers, Max. “Introduction” in Reza Banakar & Max Travers, eds, *Theory and method in socio-legal research* (Oxford: Hart Publishing, 2005).

Beaman, Lori G. “Nonreligion, Changing Religious Landscapes and Living Well Together” in Anne-Laure Zwillling & Helge Årsheim, eds, *Nonreligion in Late Modern Societies: Institutional and Legal Perspectives* (Switzerland: Springer, 2022) 15.

Beaman, Lori G. *The Transition of Religion to Culture in Law and Public Discourse* (Abingdon, UK: Routledge, 2020).

Beaman, Lori G. “Universal and Foundational: Law’s Constitution of an Ethic of Belonging for Nones” in Enzo Pace, Luigi Berzano & Giuseppe Giordan, eds, *Annual Review of the Sociology of Religion*, vol 7 (Leiden: Brill, 2016) 17.

Byrne, Cathy. *Religion in Secular Education: What, in Heaven’s Name, are we Teaching our Children?* in Lori G. Beaman & Peter Beyer, eds, *International Studies in Religion and Society*, vol 21 (Leiden: Brill, 2014).

Cabinet du ministre de l’Éducation, News Release, “Éthique et culture religieuse - Le ministre Jean-François Roberge annonce le début des consultations en vue d’une refonte du programme” (10 January 2020) online : Gouvernement du Québec  
<<https://www.quebec.ca/nouvelles/actualites/details/ethique-et-culture-religieuse-le-ministre-jean-francois-roberge-annonce-le-debut-des-consultations-en-vue-dune-refonte-du-programme>>

Commission des droits de la personne et des droits de la jeunesse (March 2020) *Mémoire – Consultations sur le programme d’études éthique et culture religieuse*.

Crawford O’Brien, Suzanne. “Border Crossings: Indigenous Spirituality and Culture in Cascadia” in Paul Bramadat, Patricia O’Connell Killen & Sarah Wilkins-Laflamme, eds,

*Religion at the edge: nature, spirituality, and secularity in the Pacific* (Vancouver: UBC Press, 2022) 60.

*Culture and Citizenship in Québec Program*, online: Ministère de l'Éducation <<http://www.education.gouv.qc.ca/en/parents-and-guardians/references/revision-ethics-religious-culture-program/>>

Dassylva, Martial. *Les vingt-cinq dernières années du comité catholique du conseil de l'instruction publique (1939-1964) : entre la réalité et l'idéologie* (Doctoral Thesis, Université du Québec à Montréal, 2013) [unpublished]

Dickson, Brian. "The Canadian Charter of Rights and Freedoms: Context and Evolution" in Errol Mendes & Stéphane Beaulac, eds, *Canadian Charter of Rights and Freedoms*, 5<sup>th</sup> ed (Markham: LexisNexis, 2014) 3.

Durham, W. Cole. "Religion and the Organization for Security and Co-Operation in Europe" in Grace Davie & Lucien N. Leustean, eds, *The Oxford Handbook of Religion and Europe* (Oxford: Oxford University Press, 2021) 386.

Estevalezes, Mireille. "Teaching About Religion in School in France" in M. de Souza et al, eds, *International Handbook of the Religious, Moral and Spiritual Dimensions of Education* (Dordrecht: Springer International Publishing, 2009) 477.

Fallers Sullivan, Winnifred. *The Impossibility of Religious Freedom* (Princeton: Princeton University Press, 2005).

Fédération des syndicats de l'enseignement CSQ, News release: "Implantation du cours Culture et citoyenneté québécoise - À quoi bon écouter l'expertise terrain?" (18 January 2023) online: Newswire <<https://www.newswire.ca/fr/news-releases/implantation-du-cours-culture-et-citoyennete-quebecoise-a-quoi-bon-ecouter-l-expertise-terrain--831314140.html>>

Fonda, Marc. "Canadian Census Figures on Aboriginal Spiritual Preferences: A Revitalization Movement?" in *Religious Studies and Theology*, vol 30, no 2 (London: Equinox Publishing, 2011) 171.

Gauvreau, Michel. *The Catholic Origins of Quebec's Quiet Revolution, 1931-1970* (Montreal: McGill-Queen's University Press, 2005) 4.

Gearon, Liam. "The Counter Terrorist Classroom: Religion, Education, and Security" (2013) 108:2 *Religious Education* 129.

Geertz, Armin W. "Analytical Theorizing in the Secular Study of Religion" in Tim Jensen & Mikael Rothstein, eds, *Secular Theories on Religion: Current Perspectives*, (Copenhagen: Museum Tusculanum Press, 2020) 21.

Gravel, Stéphanie. “Religious Education in Quebec’s Ethics and Religious Culture Curriculum: A Cultural Approach” in Lori G. Beaman et al, eds, *Religious Education in a Global-Local World* (Switzerland: Springer International Publishing, 2016) 223.

Grelle, Bruce. “Neutrality in Public School Religion Education: Theory and Politics” in Lori G. Beaman & Leo Van Arragon, eds, *Issues in Religion and Education: Whose Religion* (Leiden: Brill, 2015) 231.

Hinnells, John R. “Why Study Religions?” in John R. Hinnells, ed, *The Routledge Companion to the Study of Religion* 2nd ed (Abingdon, UK: Routledge, 2010) 5.

*Histoire et mission*, online: Fédération des syndicats de l’enseignement CSQ  
<<https://fse.lacsq.org/la-fse/histoire-et-mission/>>

*History*, online: Loyola High School < <https://www.loyola.ca/about/history>>

Jackson, Robert. “Do the Toledo Guiding Principles Politicise Religious Education?” in Marius Timmann Mjaaland, ed, *Formatting Religion: Across Politics, Education, Media, and Law* (Abingdon, UK: Routledge, 2019) 127.

Jackson, Robert. *Signposts: Policy and practices for teaching about religious and non-religious world views in intercultural education* (Strasbourg: Council of Europe Publishing, 2014).

Jensen, Tim. “A Study-of-Religions(s) Based RE: A Must for All Times – Post modern, Post-secular or Not!” in Olof Franck & Peder Thalen, eds, *Religious education in a post-secular age: case studies from Europe* (Cham: Palgrave Macmillan, 2021) 179.

Jensen, Tim. “‘Jensen’s Scientific Approach’ to Religion Education” in *Center for Educational Policy Studies Journal*, vol 9, no 4 (Ljubljana: University of Ljubljana, 2019) 31.

Jensen, Tim. “RS based RE in Public Schools: A Must for a Secular State” in *Numen: International Review for the History of Religions*, vol 55, no 2-3 (Leiden: Brill, 2008) 123.

Kislowicz, Howard. “Trying to put an ocean in a paper cup: An argument for the “undefinition of religion”, *Canadian Diversity* 9:3 (Summer 2012) 29.

Lee, Lois. *Recognizing the Non-Religious: Reimagining the Secular* (Oxford: Oxford University Press, 2015) at 32.

Lee, Lois. “Research Note: Talking about a Revolution: Terminology for the New Field of Non-religion Studies” in *Journal of Contemporary Religion*, vol 27, no 1, (UK: Routledge, 2012) 129.

Markell, H. Keith. *The Faculty of Religious Studies McGill University 1948-1978* (Montreal: McGill University, 1979).

Mendes, Errol P. “Section 1 of the Charter after 30 years: The Soul or the Dagger at its Heart?” in Errol Mendes & Stéphane Beaulac, eds, *Canadian Charter of Rights and Freedoms*, 5<sup>th</sup> ed (Markham: LexisNexis, 2014) 293.

Moir, John S. *Church and State in Canada, 1627-1867* (Toronto: McClelland and Stewart, 1967).

Moon, Richard. “Freedom of Conscience and Religion” in Errol Mendes & Stéphane Beaulac, eds, *Canadian Charter of Rights and Freedoms*, 5<sup>th</sup> ed (Markham: LexisNexis, 2014) 339.

Moon, Richard. & Benjamin L. Berger, “Introduction: Religious Neutrality and the Exercise of Public Authority” in Richard Moon & Benjamin L. Berger, eds, *Religion and the Exercise of Public Authority* (Oxford: Hart Publishing, 2016) 1.

ODIHR Advisory Council of Experts on Freedom of Religion or Belief, *Toledo Guiding Principles on Teaching about Religions and beliefs in Public Schools*, ODIHR (2007).

Orsi, Robert A. “Introduction” in Robert A. Orsi, ed, *The Cambridge Companion to Religious Studies* (Cambridge: Cambridge University Press, 2012) 1.

OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, *Guidelines for Review of Legislation Pertaining to Religion or Belief*, ODIHR (2004).

Quack, Johannes. Cora Schuh & Susanne Kind, *The Diversity of Nonreligion: Normativities and Contested Relations* (Abingdon, UK: Routledge, 2020).

Quebec, Comité sur les affaires religieuses, *Secular Schools in Québec: A Necessary Change in Institutional Culture*, Brief to the Minister of Education, Recreation and Sports (Quebec: Ministère de l'Éducation, du Loisir et du Sport, 2006).

Quebec, Ministère de l'Éducation, *Draft program – Culture and Citizenship in Quebec: Version for the elementary school pilot projects* (Québec: Ministère de l'Éducation, 2022).

Quebec, Ministère de l'Éducation, *Draft program – Culture and Citizenship in Quebec: Version for the secondary school pilot projects* (Québec: Ministère de l'Éducation, 2022).

Quebec, Ministère de l'Éducation, du Loisir et du Sport, *Quebec Education Program, Elementary Education – Update* (Quebec : Ministère de l'Éducation, du Loisir et du Sport, 2008).

Quebec, National Assembly, *Journal des débats*, 35<sup>th</sup> Leg, 2<sup>nd</sup> Sess (26 March 1997) at 5993 (Pauline Marois).

Ryder, Bruce. “State Neutrality and Freedom of Conscience and Religion” (2005) 29 Sup Ct L Rev (2d) 169.

Sandberg, Russell. *Law and Religion* (New York: Cambridge University Press, 2011).

Santoro, Simona. “Toledo guiding principles on teaching about religions and beliefs in public schools: executive summary” (2008) 19:1 *Intercultural Education* 83.

School of Religious Studies, *History*, online: McGill University  
<<https://www.mcgill.ca/religiousstudies/about/history>>.

Statistics Canada. Census of Population, 2021.

Statistics Canada, *Religion Reference Guide* (Ottawa: StatsCan, 8 February 2023).

Statistics Canada, “Religiosity in Canada and its evolution from 1985 to 2019” by Louis Cornelissen, *Insights on Canadian Society* (Ottawa: StatsCan, 28 October 2021).

Statistics Canada, “The Canadian census: A rich portrait of the country’s religious and ethnocultural diversity”, *The Daily* (Ottawa: StatCan, 26 October 2022).

Taves, Ann. “From religious studies to worldview studies” (2020) 50:1 *Religion* 137.

*The Project*, online: Nonreligion in a Complex Future <<https://nonreligionproject.ca/the-project/>>

*Universal Declaration of Human Rights*, GA Res 217 (III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948).

Van Arragon, Leo. “*We educate, they indoctrinate*”: *Religion and the politics of togetherness in Ontario public education* (Ph.D. Thesis, University of Ottawa, 2015) [unpublished]

*Who Are We?*, online: Organization for Security and Co-operation in Europe  
<<https://www.osce.org/whatistheosce>>

Wiebe, Donald. “Religious Studies” in John R. Hinnells, ed, *The Routledge Companion to the Study of Religion* 2nd ed (Abingdon, UK: Routledge, 2010) 125.

Wilkins-Laflamme, Sarah. “Second to None: Religious Nonaffiliation in the Pacific Northwest” in Paul Bramadat, Patricia O’Connell Killen & Sarah Wilkins-Laflamme, eds, *Religion at the edge: nature, spirituality, and secularity in the Pacific* (Vancouver: UBC Press, 2022) 100.

Witten, Mark A. “Tracking Secularism: Freedom of Religion, Education, and the Trinity Western University Law School Dispute” (2016) 79 Sask L Rev 215 (CanLII).