

**SUPREME COURT OF CANADA**

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| **Citation:** S.L. *v.* Commission scolaire des Chênes, 2012 SCC 7, [2012] 1 S.C.R. 235 | **Date:** 20120217  **Docket:** 33678 |

**Between:**

**S.L. and D.J.**

Appellants

and

**Commission scolaire des Chênes and Attorney General of Quebec**

Respondents

- and -

**Christian Legal Fellowship, Canadian Civil Liberties Association,**

**Coalition pour la liberté en éducation, Evangelical Fellowship of Canada,**

**Regroupement Chrétien pour le droit parental en éducation,**

**Canadian Council of Christian Charities, Fédération des commissions**

**scolaires du Québec and Canadian Catholic School Trustees’ Association**

Interveners

**Official English Translation**

**Coram:** McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment:**  (paras. 1 to 43)  **Concurring Reasons:**  (paras. 44 to 59) | Deschamps J. (McLachlin C.J. and Binnie, Abella, Charron, Rothstein and Cromwell JJ. concurring)  LeBel J. (Fish J. concurring) |

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

S.L. and D.J. *Appellants*

v.

Commission scolaire des Chênes and

Attorney General of Quebec *Respondents*

and

Christian Legal Fellowship,

Canadian Civil Liberties Association,

Coalition pour la liberté en éducation,

Evangelical Fellowship of Canada,

Regroupement Chrétien pour le droit parental en éducation,

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Canadian Catholic School Trustees’ Association *Interveners*

**Indexed as: S.L. *v.* Commission scolaire des Chênes**

2012 SCC 7

File No.: 33678.

2011:  May 18; 2012:  February 17.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

on appeal from the court of appeal for quebec

*Constitutional law — Charter of Rights — Freedom of religion — Schools — Mandatory ethics and religious culture program — Burden of proof at stage of demonstrating infringement of right to freedom of religion — Objective proof of interference with practice or belief — Parents sincerely believing in obligation to pass on precepts of Catholic religion to children — Whether ethics and religious culture program objectively interfering with parents’ ability to pass on faith to children — Whether parents demonstrating that program infringed their freedom of conscience and religion protected by s. 2(a) of the Canadian Charter of Rights and Freedoms — Whether refusal of school board to exempt children from ethics and religious culture course infringed their constitutional right.*

*Human rights — Freedom of religion — Schools — Mandatory ethics and religious culture program — Whether parents demonstrating that program infringed their freedom of conscience and religion protected by s. 3 of the Charter of human rights and freedoms, R.S.Q., c. C‑12.*

*Administrative law — Judicial review — School authorities —* *Parents requesting that school board exempt their children from ethics and religious culture course to avoid causing them serious harm — Requests for exemption denied — Whether decision of school board made at dictate of third party — Education Act, R.S.Q., c. I‑13.3, s. 222.*

In 2008, the Ethics and Religious Culture (“ERC”) Program became mandatory in Quebec schools, replacing Catholic and Protestant programs of religious and moral instruction. L and J requested that the school board exempt their children from the ERC course putting forward the existence of serious harm to the children within the meaning of s. 222 of the *Education Act*. The director of educational resources for young students denied the exemptions. L and J requested that the school board’s council of commissioners reconsider that decision, and the council of commissioners upheld this decision. L and J then turned to the Superior Court seeking both a declaration that the ERC Program infringed their and their children’s right to freedom of conscience and religion, and judicial review of the decisions denying their requests for exemption from the ERC course. They claimed that these decisions had been made at the dictate of the Ministère de l’Éducation, du Loisir et du Sport (“Ministère”). The Superior Court dismissed the motion for declaratory judgment and the motion for judicial review. Upon motions being brought by the school board and the Attorney General of Quebec to dismiss the appeal, the Court of Appeal refused to hear L and J’s appeal as of right and also dismissed their motion for leave to appeal.

*Held*: The appeal should be dismissed.

*Per* McLachlin C.J. and Binnie, Deschamps, Abella, Charron, Rothstein and Cromwell JJ.: Although the sincerity of a person’s belief that a religious practice must be observed is relevant to whether the person’s right to freedom of religion is at issue, an infringement of this right cannot be established without objective proof of an interference with the observance of that practice. 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.

In the present case, L and J sincerely believe that they have an obligation to pass on the precepts of the Catholic religion to their children. The sincerity of their belief in this practice is not challenged. To discharge their burden at the stage of proving an infringement, L and J had to show that, from an objective standpoint, the ERC Program interfered with their ability to pass their faith on to their children. In this regard, they claim that the ERC Program is not in fact neutral and that students following the ERC course would be exposed to a form of relativism which would interfere with their ability to pass their faith on to their children. They also maintain that exposing children to various religious facts is confusing for them. The evidence demonstrates, firstly, that the Ministère’s formal purpose does not appear to have been to transmit a philosophy based on relativism or to influence young people’s specific beliefs. Exposing children to a comprehensive presentation of various religions without forcing the children to join them does not constitute an indoctrination of students that would infringe the freedom of religion of L and J. Furthermore, 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.

L and J have not proven that the ERC Program infringed their freedom of religion, or consequently, that the school board’s refusal to exempt their children from the ERC course violated their constitutional right. They have also shown no error that would justify setting aside the trial judge’s conclusion that the school board’s decision was not made at the dictate of a third party.

*Per* LeBel and Fish JJ.: The violation claimed by L and J to their right to freedom of religion concerned the obligations of parents relating to the religious upbringing of their children and the passing on of their faith. Following the analytical approach adopted in *Amselem*, L and J needed first to establish that their religious belief was sincere and, subsequently, that the ERC Program infringed that aspect of their freedom of religion. This second part of the analysis must remain objective in nature. It was not enough to express disagreement with the program and its objectives. L and J’s evidence concerning the violation of their freedom of religion consisted of a statement of their faith and of their conviction that the ERC Program interfered with their obligation to teach and pass on that faith to their children. In addition, they filed the ERC Program as well as a textbook used to teach the program. In its current form, the program says little about the actual content of the teaching and the approach that teachers will actually take in dealing with their students. It determines neither the content of the textbooks or educational materials to be used, nor their approach to religious facts or to the relationship between religious values and the ethical choices open to students. The program is made up of general statements, diagrams, descriptions of objectives and competencies to be developed as well as various recommendations for the program’s implementation. It is not really possible to assess what the program’s implementation will actually mean. Despite the filing of a textbook, the evidence concerning the teaching methods and content and the spirit in which the program is taught has remained sketchy. Based on the rules of civil evidence, therefore, the documentary evidence does not make it possible to find a violation of the *Canadian Charter* or the *Quebec Charter*. The state of the record, however, does not make it possible to conclude that the ERC Program and its implementation could not, in the future, possibly infringe the rights granted to L and J and persons in the same situation.

**Cases Cited**

By Deschamps J.

**Referred to:** *Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326; *Congrégation des témoins de Jéhovah de St‑Jérôme‑Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713; *Zylberberg v. Sudbury Board of Education (Director)* (1988), 65 O.R. (2d) 641; *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)* (1990), 71 O.R. (2d) 341; *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551; *R. v. Jones*, [1986] 2 S.C.R. 284; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425; *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, [2002] 4 S.C.R. 710.

By LeBel J.

**Referred to:** *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551; *Multani v. Commission scolaire Marguerite‑Bourgeoys*, 2006 SCC 6, [2006] 1 S.C.R. 256; *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567; *B. (R.) v. Children’s Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315; *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, [2002] 4 S.C.R. 710; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *Congrégation des témoins de Jéhovah de St‑Jérôme‑Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650.

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*Act to amend various legislative provisions of a confessional nature in the education field*, S.Q. 2005, c. 20.

*Act to amend various legislative provisions respecting education as regards confessional matters*, S.Q. 2000, c. 24.

*Act to establish the Department of Education and the Superior Council of Education*, S.Q. 1963‑64, c. 15.

*Canadian Charter of Rights and Freedoms*, ss. 1, 2(*a*).

*Charter of human rights and freedoms*, R.S.Q., c. C‑12, s. 3.

*Constitution Act, 1867*, s. 93A.

*Constitution Amendment, 1997 (Quebec)*, SI/97‑141.

*Décret 511‑95 concernant la Commission des États généraux sur l’éducation*, (1995) 127 G.O. II, 1960.

*Education Act*, R.S.Q., c. I‑13.3, s. 222.

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Woehrling, José. “Les principes régissant la place de la religion dans les écoles publiques du Québec”, dans Myriam Jézéquel, dir., *Les accommodements raisonnables: quoi, comment, jusqu’où? Des outils pour tous*. Cowansville, Qué.: Yvon Blais, 2007, 215.

APPEAL from judgments of the Quebec Court of Appeal (Beauregard, Morissette and Giroux JJ.A.), 2010 QCCA 346 (CanLII), SOQUIJ AZ-50610874, [2010] J.Q. no 1357 (QL), 2010 CarswellQue 1362, 2010 QCCA 348 (CanLII), SOQUIJ AZ-50610876, [2010] J.Q. no 1355 (QL), and 2010 QCCA 349 (CanLII), SOQUIJ AZ-50610877, [2010] J.Q. no 1356 (QL), affirming a decision of Dubois J., 2009 QCCS 3875, [2009] R.J.Q. 2398, SOQUIJ AZ-50573325, [2009] J.Q. no 8619 (QL), 2009 CarswellQue 8647. Appeal dismissed.

*Mark Phillips* and *Guy Pratte*, for the appellants.

*Bernard Jacob*, *René Lapointe* and *Mélanie Charest*, for the respondent Commission scolaire des Chênes.

*Benoît Boucher*, *Amélie Pelletier‑Desrosiers* and *Caroline Renaud*, for the respondent the Attorney General of Quebec.

*Robert E. Reynolds* and *Ruth Ross*, for the intervener the Christian Legal Fellowship.

*Jean‑Philippe Groleau*, *Guy Du Pont* and *Léon H. Moubayed*, for the intervener the Canadian Civil Liberties Association.

*Jean‑Pierre Bélisle*, for the intervener Coalition pour la liberté en éducation.

*Albertos Polizogopoulos*, *Don Hutchinson* and *Faye Sonier*, for the intervener the Evangelical Fellowship of Canada.

*Jean‑Yves Côté*, for the intervener Regroupement Chrétien pour le droit parental en éducation.

*Iain T. Benson*, for the interveners the Canadian Council of Christian Charities and the Canadian Catholic School Trustees’ Association.

Written submissions only by *Alain Guimont*, for the intervener Fédération des commissions scolaires du Québec.

English version of the judgment of McLachlin C.J. and Binnie, Deschamps, Abella, Charron, Rothstein and Cromwell JJ. delivered by

1. Deschamps J. — The societal changes that Canada has undergone since the middle of the last century have brought with them a new social philosophy that favours the recognition of minority rights. The developments in the area of education that have taken place in Quebec and that are at issue in this appeal must be situated within this larger context. Given the religious diversity of present-day Quebec, the state can no longer promote a vision of society in public schools that is based on historically dominant religions.
2. The appellants, S.L. and D.J., are parents of school‑aged children. They submit that the refusal of the respondent Commission scolaire des Chênes (“school board”) to exempt their children from the Ethics and Religious Culture (“ERC”) course infringes their freedom of conscience and religion, which is protected by s. 2(*a*) of the *Canadian Charter of Rights and Freedoms* (the “*Canadian Charter*”) and s. 3 of the *Charter of human rights and freedoms*, R.S.Q., c. C‑12(the “*Quebec Charter*”). Their arguments cannot succeed. Although the sincerity of a person’s belief that a religious practice must be observed is relevant to whether the person’s right to freedom of religion is at issue, an infringement of this right cannot be established without objective proof of an interference with the observance of that practice. In this case, given the trial judge’s findings of fact and the evidence in the record concerning the neutrality of the ERC Program, I conclude that the appellants have failed to prove such an interference. There is therefore no basis for declaring that the school board erred in refusing to exempt the appellants’ children from the ERC course. As a result, I would dismiss the appeal with costs.

I. Facts

1. On May 12, 2008, the appellants requested that the school board exempt their children from the ERC course, putting forward the existence of serious harm to the children within the meaning of the second paragraph of s. 222 of the *Education Act*, R.S.Q., c. I‑13.3.
2. On May 20, 2008, the director of educational resources for young students denied the exemptions. On May 26, 2008, the appellants requested that the school board’s council of commissioners reconsider that decision. On June 25, 2008, after a hearing at which the appellants presented their position, the council of commissioners upheld the director’s decision. The appellants contested the decisions of May 20 and June 25 at the Superior Court, arguing that they had been made at the dictate of a third party, the Ministère de l’Éducation, du Loisir et du Sport (“Ministère”). They sought both a declaration that the ERC Program infringed their and their children’s right to freedom of conscience and religion, and judicial review of the decision of the director and that of the council of commissioners, denying their requests for exemption from the ERC course.

II. Decisions of the Courts Below

1. Dubois J. of the Superior Court found that the appellants had not proved that the ERC Program infringed their freedom of conscience and religion (2009 QCCS 3875, [2009] R.J.Q. 2398). He concluded that the objective presentation of various religions to children did not put them [translation] “in an obligatory and coercive situation” (paras. 64 and 66). He dismissed the motion for a declaratory judgment. Having found that the ERC Program did not infringe the right to freedom of conscience and religion, he held that the school board’s decision to deny the exemptions was valid (para. 123). In light of the evidence, he also held that the school board’s decision had not been made under the Ministère’s influence (para. 119) and consequently dismissed the motion for judicial review.
2. The appellants appealed as of right to the Court of Appeal from the dismissal of the motion for a declaratory judgment. They also applied for leave to appeal the decision to dismiss the motion for judicial review. The Attorney General of Quebec and the school board each brought a motion to dismiss the appeal as of right. They also contested the application for leave to appeal. For the reasons it gave in *S.L. v. Commission scolaire des Chênes*, the Court of Appeal granted the motions to dismiss, dismissed the appeal as of right, and also dismissed the motion for leave to appeal (2010 QCCA 346 (CanLII); see also 2010 QCCA 348 (CanLII) and 2010 QCCA 349 (CanLII)). It found no error in Dubois J.’s analysis and also concluded that the appeal had become moot, given that the appellants’ two children were no longer obligated to take the ERC course.
3. The parties have not commented on the analytical approach that should be applied in light of the procedural choices made in this case. In this respect, I will merely note that there is nothing to be gained from a multiplicity of proceedings and that the parties’ choice of style of cause does not affect the applicable analytical approach (*Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326).

III. Issues

1. To begin, this Court must decide whether the trial judge erred in holding that the school board’s refusal to exempt the appellants’ children from the ERC course did not infringe the appellants’ freedom of conscience and religion. This issue turns on whether the trial judge erred in finding that the appellants had not proven that the ERC Program itself infringed their freedom of religion.
2. Then, the Court must decide whether the trial judge erred in holding that the school board’s decision had not been made at the dictate of a third party and whether the Court of Appeal erred in law in holding that the appeal had become moot.

IV. Background

1. The place of religion in civil society has been a source of public debate since the dawn of civilization. The gradual separation of church and state in Canada has been part of a broad movement to secularize public institutions in the Western World (M. H. Ogilvie, *Religious Institutions and the Law in Canada* (3rd ed. 2010), at pp. 26 and 30; see also *Congrégation des témoins de Jéhovah de St‑Jérôme‑Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650, at paras. 67‑68, *per* LeBel J.). Religious neutrality 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 individual rights (see J. Woehrling, “La place de la religion dans les écoles publiques du Québec” (2007), 41 *R.J.T.* 651; D. Grimm, “Conflicts Between General Laws and Religious Norms” (2009), 30 *Cardozo L. Rev.* 2369).
2. The religious portrait of our society is a key factor in the adoption of a policy of neutrality, not only in Quebec but also elsewhere in Canada. As a result of globalization of trade and increased individual mobility, the diversity of religious beliefs in Canada has increased sharply over the past decades. The 2001 Census of Canada listed approximately 95 religious groups that were large enough to be considered separate religious institutions for the purposes of statistical records. Furthermore, more than 23 percent of Canadians declared that they were members of non‑Christian religions or reported no religious identity at all (Ogilvie, at pp. 55‑56).
3. The creation of the Ministère in 1964 meant that the Quebec government took charge of public education, an area which had been dominated by religious communities up to that time. On February 5, 1964, following the *Parent Report* (1963), which had recommended an increase in public investment in education, the Legislative Assembly passed the *Act to establish the Department of Education and the Superior Council of Education*, S.Q. 1963‑64, c. 15*.* During the first 30 years of the new department’s existence, the denominational school system remained in place. On April 12, 1995, the Quebec government created the Commission for the Estates General on Education (Order in Council 511‑95, (1995) 127 G.O. II, 1960). The Commission’s members recommended a far‑reaching review of education programs. In 1997, the addition of s. 93A to the *Constitution Act, 1867* made possible the abolishment of denominational school boards in Quebec and the reorganization of Quebec’s school boards on the basis of language (*Constitution Amendment, 1997 (Quebec)*, SI/97‑141).
4. In a statement dated March 26, 1997, the Minister of Education explained the approach the Quebec government proposed to adopt to enable public schools to meet the expectations of Quebeckers:

[translation] First, it is expedient to manage these expectations from the point of view of an open, pluralistic society. 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.

(National Assembly, *Journal des débats*, 2nd Sess., 35th Leg., March 26, 1997, at p. 5993)

1. The Minister spoke of the need to consider more fully the adjustments necessary to ensure that religious diversity was taken into account in courses taught in schools:

[translation] Finally, in the context of a pluralistic society, is it not desirable that all students receive some instruction concerning the phenomenon of religion, courses on religious culture which cover the various great traditions, and courses on the history of religion? I intend to submit this question to a Task Force whose conclusions will be referred to the National Assembly’s Standing Committee on Education, which may then hear any groups interested in this issue.

(*Ibid.*, at p. 5994)

1. In 1999, the Task Force on the Place of Religion in Schools in Quebec submitted its report (*Religion in Secular Schools: A New Perspective for Québec*). In addition to moral education, the Task Force recommended, *inter alia*, that religions be studied in schools from a cultural perspective. In 2000, the Minister of Education announced that adjustment would be made to respond to the diversity of the moral and religious expectations of the population. That same year, a first legislative amendment was passed, marking the start of the secularization process (*An Act to amend various legislative provisions respecting education as regards confessional matters*, S.Q. 2000, c. 24).
2. In 2005, the Minister of Education published a policy paper setting out the principles on which the proposed ERC Program was to be based (*Establishment of an ethics and religious culture program: Providing future direction for all Québec youth*). On June 15, 2005, the *Act to amend various legislative provisions of a confessional nature in the education field*, S.Q. 2005, c. 20, was passed. Among other things, the Act authorized schools to replace Catholic and Protestant programs of religious and moral instruction subject to certain conditions. Thus, the ERC Program was implemented gradually before becoming mandatory at the start of the 2008‑9 school year. In May 2008, the appellants made their requests for exemption.

V. Applicable Principles

1. The historical, political and social context of the late 20th century, the enactment of the *Quebec* and *Canadian* *Charters*, and the interpretation of freedom of religion by Canadian courts have played an important role in the Quebec government’s decision to remain neutral in religious matters. While it is true that the *Canadian Charter*, unlike the U.S. Constitution, does not explicitly limit the support the state can give to a religion, Canadian courts have held that state sponsorship of one religious tradition amounts to discrimination against others.
2. In *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, this Court held that the *Lord’s Day Act*, R.S.C. 1970, c. L‑13, whose acknowledged purpose was the compulsion of religious observance on Sunday, infringed the freedom of religion of non‑Christians. Dickson J. (as he then was) concluded that “[t]he protection of one religion and the concomitant non‑protection of others imports disparate impact destructive of the religious freedom of the collectivity” (p. 337). The issue of state neutrality came before the Court again a short time later in *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713. The majority held that, although the selection of Sunday as a pause day significantly infringed on the freedom of religion of those who observed a day of rest on Saturday for religious reasons, the legislation was justifiable as a reasonable limit under s. 1 of the *Canadian Charter*. A majority of the Court’s judges found that the purpose of the *Retail Business Holidays Act*, R.S.O. 1980, c. 453, was valid because of its secular aspect: “The title and text of the Act, the legislative debates and the Ontario Law Reform Commission’s *Report on Sunday Observance Legislation* (1970), all point to the secular purposes underlying the Act” (p. 744).
3. In two important decisions in the years that followed, the Ontario Court of Appeal also stressed how important it was for the state to remain neutral in matters of religion. In *Zylberberg v. Sudbury Board of Education (Director)* (1988), 65 O.R. (2d) 641, a majority of the court struck down a regulation under the *Education Act*, R.S.O. 1980, c. 129, which made the recitation of Christian prayers compulsory in public schools unless an exemption was granted (p. 654):

On its face, [the regulation] infringes the freedom of conscience and religion guaranteed by s. 2(*a*) of the Charter. . . . The recitation of the Lord’s Prayer, which is a Christian prayer, and the reading of Scriptures from the Christian Bible impose Christian observances upon non‑Christian pupils and religious observances on non‑believers.

1. In *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)* (1990),71 O.R. (2d) 341, the Ontario Court of Appeal considered a regulation that made periods of religious education a compulsory part of the public school curriculum. The court held unanimously that the purpose and effect of the regulation were to provide for religious indoctrination, which the *Canadian Charter* does not authorize. Such indoctrination was not rationally connected to the educational objective of inculcating proper moral standards in elementary school students. The Court of Appeal noted that a program that taught about religion and moral values without indoctrination in a particular faith would not breach the *Canadian Charter* (p. 344).
2. The concept of state religious neutrality in Canadian case law has developed alongside a growing sensitivity to the multicultural makeup of Canada and the protection of minorities. Already in *Big M Drug Mart*, Dickson J. had stated that “the diversity of belief and non‑belief, the diverse socio‑cultural backgrounds of Canadians make it constitutionally incompetent for the federal Parliament to provide legislative preference for any one religion at the expense of those of another religious persuasion” (p. 351). In the same way, the Ontario Court of Appeal held in *Canadian Civil Liberties Assn.* that imposing a religious practice of the majority had the effect of infringing the freedom of religion of the minority and was incompatible with the multicultural reality of Canadian society (p. 363).
3. That being said, it was in *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551, that the elements of a definition of freedom of religion were outlined. In that case, Iacobucci J. explained that a person does not have to show that the practice the person sincerely believes he or she must observe or the belief the person endorses corresponds to a religious precept recognized by other followers. If the person believes that he or she has an obligation to act in accordance with a practice or endorses a belief “having a nexus with religion”, the court is limited to assessing the sincerity of the person’s belief (paras. 39, 43, 46 and 54).
4. 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. For example, in *Edwards Books*, the legislation required retailers who were Saturday observers to close a day more than Sunday observers. In *Amselem*, the infringement resulted from a prohibition against erecting any structure on the balconies of a building held in co‑ownership, while the appellants believed that their religion required them to dwell in their own succahs.
5. 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.
6. Furthermore, the following comment of Wilson J. in *R. v. Jones*, [1986] 2 S.C.R. 284, at pp. 313-14, which Iacobucci J. quoted in *Amselem*, para. 58, bears repeating: s. 2(*a*) of the *Canadian Charter* “does not require the legislature to refrain from imposing any burdens on the practice of religion” (emphasis omitted; see also *Edwards Books*). “The ultimate protection of any particular *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). No right is absolute.

VI. Application

1. The appellants sincerely believe that they have an obligation to pass on the precepts of the Catholic religion to their children (A.F., at para. 66). The sincerity of their belief in this practice is not challenged by the respondents in this case. The only question at issue is whether the appellants’ ability to observe the practice has been interfered with.
2. To discharge their burden at the stage of proving an infringement, the appellants had to show that, from an objective standpoint, the ERC Program interfered with their ability to pass their faith on to their children. This is not the approach they took. Instead, they argued that it was enough for them to say that the program infringed their right (A.F., at para. 126). As I have already explained, it is not enough for the appellants to say that they had religious reasons for objecting to their children’s participation in the ERC course. Dubois J. of the Superior Court was therefore correct in rejecting that interpretation. He stated the following: [translation] “To claim that the general presentation of various religions may have an adverse effect on the religion one practises, it is not enough to state with sincerity that one is a practising Catholic” (para. 51).
3. In their requests for exemption made to the school board on May 12, 2008, the appellants had alleged that the ERC course was liable to cause the following harm:

[translation]

1. Losing the right to choose an education consistent with one’s own moral and religious principles; interfering with the fundamental freedom of religion, conscience, opinion and expression of children and their parents by forcing children to take a course that does not reflect the religious and philosophical beliefs with which their parents have the right and duty to bring them up.

2. Being put in the situation of learning from a teacher who is not adequately trained in the subject matter and who has been deprived of freedom of conscience by being forced to perform this task.

3. Upsetting children by exposing them at too young an age to convictions and beliefs that differ from the ones favoured by their parents.

4. Dealing with the phenomenon of religion in a course that claims to be “neutral”.

5. Being exposed, through this mandatory course, to the philosophical trend advocated by the state, namely relativism.

6. Interfering with children’s faith. [A.R., vol. III, at pp. 499‑500]

1. The principal argument that emerges from the reasons given by the appellants in their requests for an exemption is that the obligation they believe they have, namely to pass on their faith to their children, has been interfered with. In this regard, the freedom of religion asserted by the appellants is their own freedom, not that of the children. The common theme that runs through the appellants’ objections is that the ERC Program is not in fact neutral. According to the appellants, students following the ERC course would be exposed to a form of relativism, which would interfere with the appellants’ ability to pass their faith on to their children. Insofar as certain of the appellants’ complaints focus on the children’s freedom of religion by referring to the “disruption” that would result from exposing them to different religious facts, I will discuss this in my analysis of the alleged infringement of the appellants’ freedom of religion.
2. We must recognize that trying to achieve religious neutrality in the public sphere is a major challenge for the state. The author R. Moon has clearly described the difficulty of implementing a legislative policy that will be seen by everyone as neutral and respectful of their freedom of religion:

If secularism or agnosticism constitutes a position, worldview, or cultural identity equivalent to religious adherence, then its proponents may feel excluded or marginalized when the state supports even the most ecumenical religious practices. But by the same token, the complete removal of religion from the public sphere may be experienced by religious adherents as the exclusion of their worldview and the affirmation of a non‑religious or secular perspective . . . .

. . . Ironically, then, as the exclusion of religion from public life, in the name of religious freedom and equality, has become more complete, the secular has begun to appear less neutral and more partisan. With the growth of agnosticism and atheism, religious neutrality in the public sphere may have become impossible. What for some is the neutral ground on which freedom of religion and conscience depends is for others a partisan anti‑spiritual perspective.

(“Government Support for Religious Practice”, in *Law and Religious Pluralism in Canada* (2008), 217, at p. 231)

1. We must also accept that, from a philosophical standpoint, absolute neutrality does not exist. Be that as it may, absolutes hardly have any place in the law. In administrative law, for example, the concept of impartiality calls for an assessment that takes account of the context and the intervention of human actors (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 47). Moreover, in analysing infringements of rights protected by the Charters, this Court has often repeated that no right is absolute (*Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425, at p. 596). “This is so because we live in a society of individuals in which we must always take the rights of others into account” (*Amselem*, at para. 61).
2. Therefore, following a realistic and non-absolutist approach, state neutrality is assured when the state neither favours nor hinders any particular religious belief, that is, when it shows respect for all postures towards religion, including that of having no religious beliefs whatsoever, while taking into account the competing constitutional rights of the individuals affected.
3. It should be noted that the appellants’ criticisms cannot address the way the course was taught to their children, since their children have never followed the course. The trial judge only examined the program.
4. The ERC Program has two components: instruction in ethics and instruction in religious culture. Its purpose is set out in the preamble found in each of the documents entitled “Ethics and Religious Culture” prepared by the Ministère (online), one for the elementary level and the other for the secondary level:

For the purposes of this program, instruction in ethics is aimed at developing an understanding of ethical questions that allows students to make judicious choices based on knowledge of the values and references present in society. The objective is not to propose or impose moral rules, nor to study philosophical doctrines and systems in an exhaustive manner.

Instruction in religious culture, for its part, is aimed at fostering an understanding of several religious traditions whose influence has been felt and is still felt in our society today. In this regard, emphasis will be placed on Québec’s religious heritage. The historical and cultural importance of Catholicism and Protestantism will be given particular prominence. The goal is neither to accompany students in a spiritual quest, nor to present the history of doctrines and religions, nor to promote some new common religious doctrine aimed at replacing specific beliefs.

1. The Ministère’s formal purpose thus does not appear to have been to transmit a philosophy based on relativism or to influence young people’s specific beliefs.
2. Regarding the program itself, Dubois J. reviewed the documentary evidence, heard the witnesses and drew the following conclusions (paras. 68‑69):

[translation] Under the new program, the school will present the range of different religions and get children to talk about self‑recognition and the common good. Subsequently, therefore, the additional work that must be done for religious practice is up to the parents and the pastors of the Church to which the parents and children belong.

In light of all the evidence adduced, the Court does not see how the ERC course interferes with the applicants’ freedom of conscience and religion for their children when what is done is to make a comprehensive presentation of various religions without forcing the children to join them.

1. After reviewing the record, I see no error in the trial judge’s assessment. Having adopted a policy of neutrality, the Quebec government cannot set up an education system that favours or hinders any one religion or a particular vision of religion. Nevertheless, it is up to the government to choose educational programs within its constitutional framework. In light of this context, I cannot conclude that exposing children to “a comprehensive presentation of various religions without forcing the children to join them” constitutes in itself an indoctrination of students that would infringe the appellants’ freedom of religion.
2. The appellants also maintain that exposing children to various religious facts is confusing for them. The confusion or “vacuum” allegedly results from the fact that different beliefs are presented on an equal footing.
3. In *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, [2002] 4 S.C.R. 710, the Court had an opportunity to consider the cognitive dissonance that may be encountered by children growing up in a diverse society. The Chief Justice made the following comments (paras. 65‑66):

Children encounter [some cognitive dissonance] every day in the public school system as members of a diverse student body. They see their classmates, and perhaps also their teachers, eating foods at lunch that they themselves are not permitted to eat, whether because of their parents’ religious strictures or because of other moral beliefs. They see their classmates wearing clothing with features or brand labels which their parents have forbidden them to wear. And they see their classmates engaging in behaviour on the playground that their parents have told them not to engage in. The cognitive dissonance that results from such encounters is simply a part of living in a diverse society. It is also a part of growing up.  Through such experiences, children come to realize that not all of their values are shared by others.

Exposure to some cognitive dissonance is arguably necessary if children are to be taught what tolerance itself involves.

1. 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*.
2. The appellants have not proven that the ERC Program infringed their freedom of religion. Therefore, the trial judge did not err in holding that the school board’s refusal to exempt their children from the ERC course did not violate their constitutional right.
3. Moreover, the appellants have shown no error that would justify setting aside the trial judge’s conclusion that the school board’s decision was not made at the dictate of a third party. As for the Court of Appeal’s decision to dismiss the appeal for mootness, suffice it to say that the question before this Court was important and that it justified hearing the appeal even though the appellants’ children were no longer subject to the obligation to take the ERC course.
4. The Court of Appeal was therefore right to uphold the conclusions of the Superior Court. For these reasons, the appeal is dismissed with costs.

English version of the reasons of LeBel and Fish JJ. delivered by

LeBel J. —

I. Introduction

1. This appeal once again brings to light the often serious difficulties resulting from changes in the relationship between religions, their members and the surrounding society in which they co‑exist. The issues now before this Court arise out of the recent secularization of the public education system in Quebec and the implementation by Quebec’s Ministère de l’Éducation, du Loisir et du Sport, in 2008 of an Ethics and Religious Culture Program (“ERC Program”), which is now mandatory at the elementary and secondary levels. The implementation of this program re‑emphasizes the continuing problem of establishing an appropriate relationship between the religious neutrality of a modern democratic state and the deeply held religious beliefs of members of Quebec society who are often in a minority situation. In this context, and given the weaknesses of the specific record this Court must examine, I conclude, like my colleague Deschamps J., that the appeal should be dismissed. However, I do not thereby intend to conclusively uphold the ERC Program’s constitutional validity or, above all, its specific application in the everyday workings of the education system. I will therefore make some comments on this subject in the reasons that follow.

II. Origin and Specific Characteristics of the Challenge

1. The manner in which this legal debate began did not facilitate the task of examining and resolving the legal issues raised by the parties. As Deschamps J. explains in her reasons, the appellants combined two different requests for relief in a single proceeding. The first was a motion for judicial review in which the appellants sought to overturn the denial of their request for an exemption from the ERC Program for their children under s. 222 of the *Education Act*,R.S.Q., c. I‑13.3. The other was a motion to the Superior Court for a declaration that the ERC Program violated their constitutional right and the constitutional right of their children to the protection of freedom of conscience and religion. The appellants undertook their challenge a very short time after the new program was implemented. This rushed approach hardly allowed for an assessment of the concrete impact of the program’s implementation beyond the educational framework it established. This situation affected the content and quality of the evidence.
2. I will not go over the motion for judicial review as such. The Superior Court’s findings of fact do not support the argument that the decision to deny the appellants’ children an exemption from the ERC Program was null because it was made at the dictate of a third party (2009 QCCS 3875, [2009] R.J.Q. 2398). I will comment solely on the declaratory aspect of the proceeding, that is, the allegation that the appellants’ freedom of religion and that of their children was violated.

III. Allegation That Freedom of Religion Violated and Analytical Approach Taken by the Superior Court

1. The appellants did not seek to annul the ERC Program. Instead, they asked the Superior Court to find that the refusal to exempt their children infringed the freedom of conscience and religion protected by s. 2(*a*) of the *Canadian Charter of Rights and Freedoms* (the “*Canadian Charter*”). They also relied on s. 3 of the Quebec *Charter of human rights and freedoms*, R.S.Q., c. C‑12 (“the *Quebec Charter*”). They define themselves as Catholics and say that they practise their religion, which imposes an obligation on them to pass on their faith to their children. In substance, they argue that the mandatory nature of the program infringes this freedom of religion. First, the program advocates a relativistic view of religions. Next, it conveys the idea that religious values do not constitute a sound basis for making ethical decisions. Finally, the ERC Program tends to place children in a moral vacuum by requiring them to put aside their religious values when discussing ethical questions in class.
2. With all due respect, I am not convinced that the trial judge adhered to the analytical approach first established by this Court in *Syndicat Northcrest v. Amselem*,2004 SCC 47, [2004] 2 S.C.R. 551, a case involving the application of s. 3 of the *Quebec Charter*. Two subsequent judgments by this Court have applied this approach to issues relating to the implementation of s. 2(*a*) of the *Canadian Charter* (*Multani v. Commission scolaire Marguerite‑Bourgeoys*,2006 SCC 6, [2006] 1 S.C.R. 256, at para. 34; *Alberta v. Hutterian Brethren of Wilson Colony*,2009 SCC 37, [2009] 2 S.C.R. 567, at para. 32)*.*
3. According to the approach adopted by this Court in *Amselem*, an applicant must first establish the sincerity of his or her belief in a religious doctrine, practice or obligation. In this area, the courts do not search an applicant’s soul or conscience and do not seek to become theologians. They ascertain whether there is a sincere subjective belief (paras. 42‑43). The courts then determine whether the applicant has demonstrated significant infringement to that belief as a result of state action (paras. 58‑60). This second part of the analysis must remain objective in nature.
4. In the present case, the allegation that freedom of religion was violated concerned a specific aspect of such freedom, namely the obligations of parents relating to the religious upbringing of their children and the passing on of their faith. The right of parents to bring up their children in their faith is part of the freedom of religion guaranteed by the *Canadian Charter* (*B. (R.) v. Children’s Aid Society of Metropolitan Toronto*,[1995] 1 S.C.R. 315, at para. 105, *per* La Forest J.). Following the analytical approach adopted in *Amselem*, the appellants needed to establish that their religious belief was sincere and that the ERC Program infringed that aspect of their freedom of religion.
5. The Superior Court turned this matter into a debate about the incorrect nature of the parents’ belief. The trial judge acknowledged that the parents were Catholics and that they believed they had an obligation to pass on their faith to their children. Having gotten to that stage, he did not consider the program’s content or its impact on the alleged belief. In substance, he held instead that the parents were wrong to believe that the program’s objectives interfered with the fulfilment of their religious obligations toward their children. He relied mainly on the opinion of a theologian who served as an expert for the respondents and on the fact that the Assemblée des évêques catholiques du Québec was not opposed to the objectives of the ERC Program.
6. The trial judge should have endeavoured to consider in more concrete terms the program’s content and the impact claimed, correctly or not, by the appellants on the fulfilment of their religious obligations. There is no doubt that the appellants bore the burden of proof at this stage of the constitutional analysis. It was not enough to express disagreement with the program and its objectives. Despite being sincerely held, their opinion that basic moral relativism was the program’s essential characteristic was not sufficient to establish a violation of the *Canadian Charter* or the *Quebec Charter*. It must therefore be determined whether the claimants discharged their burden of proof.

IV. The Problem of Proving a Violation of Freedom of Religion

1. This brings us to one of the problems that arise in this matter in determining whether the ERC Program is consistent with Quebec’s constitutional obligations relating to freedom of religion. First, a finding of a violation of the two Charters cannot be based solely on a subjective perception of the Program’s impact. Moreover, the Program’s design and the content of the educational and administrative framework do not make it easy to assess the program’s concrete impact in the everyday workings of Quebec’s public school system. In other words, is it a program that will provide all students with better knowledge of society’s diversity and teach them to be open to differences? Or is it an educational tool designed to get religion out of children’s heads by taking an essentially agnostic or atheistic approach that denies any theoretical validity to the religious experience and religious values? Is the program consistent with the notion of secularism that has gradually been developed in constitutional cases, particularly in the field of education? The state of the record makes it impossible to answer these questions with confidence.
2. This Court’s decisions have stressed the importance of neutrality in the public school system. They have recognized that the very nature of a public education system implies the creation of opportunities for students of different origins and religions to learn about the diversity of opinions and cultures existing in our society, even in religious matters. Imparting information about different views of the world cannot be equated with a violation of freedom of religion (*Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, [2002] 4 S.C.R. 710, at paras. 65‑66 and 211‑12). Moreover, in the modern Canadian political system, the state in principle takes a position of neutrality. And it is barred from enacting private legislation that favours one religion over another (*R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 351, *per* Dickson J. (as he then was)). In a diverse country like Canada, such a position has become essential to preserving the constitutional freedom to believe or not believe and to express one’s beliefs (*Congrégation des témoins de Jéhovah de St‑Jérôme‑Lafontaine v. Lafontaine (Village)*,2004 SCC 48, [2004] 2 S.C.R. 650). Under the constitutional principles governing state action, the state has neither an obligation to promote religious faith nor a right to discourage religious faith in its public education system. Only such true neutrality is in keeping with the secularism of the state (J. Woehrling,“Les principes régissant la place de la religion dans les écoles publiques du Québec”, in M. Jézéquel, ed., *Les accommodements raisonnables: quoi, comment, jusqu’où? Des outils pour tous* (2007), 215, at p. 220).
3. The appellants’ evidence concerning the violation of their freedom of religion consists first of a statement of their faith and of their conviction that the ERC Program interferes with their obligation to teach and pass on that faith to their children. In addition, they filed the ERC Program, which is several hundred pages long and takes up a volume of the appeal record, as well as a textbook used to teach the program.
4. Based on the rules of civil evidence, this documentation does not make it possible to find a violation of the *Canadian Charter* or the *Quebec Charter*. This conclusion results from the very nature of the administrative document prepared by Quebec’s Ministère de l’Éducation, du Loisir et du Sport, to explain the program’s general content, objectives and methods. In fact, that document in its current form says little about the actual content of the teaching and the approach that teachers will actually take in dealing with their students. It determines neither the content of the textbooks or educational materials to be used, nor their approach to religious facts or to the relationship between religious values and the ethical choices open to students. The program is made up of general statements, diagrams, descriptions of objectives and competencies to be developed as well as various recommendations for the program’s implementation. Even after a careful reading, it is not really possible to assess what the program’s implementation will actually mean. As a result, it is hard to tell what the emphasis the program will place on Quebec’s religious heritage and on the cultural and historical importance of Catholicism and Protestantism in that province will mean (A.R., vol. V, at p. 710).
5. A textbook has been filed and experts have expounded and testified for both sides, strongly supporting conflicting positions. The evidence concerning the teaching methods and content and the spirit in which the program is taught has remained sketchy. Unless it can be found that any exposure of children to realities that differ from those in their family environment is unacceptable in light of the constitutional or quasi‑constitutional protection conferred on freedom of religion, I cannot conclude that the appellants have been able to prove their case.
6. As a result of the state of the record, however, I am also unable to conclude that the program and its implementation could not, in the future, possibly infringe the rights granted to the appellants and persons in the same situation. In this regard, the single textbook filed in the record may cause some confusion in terms of the way it presents the connection between the program’s religious content and its ethical content. For example, does the content of the Christmas‑related exercises for six‑year‑old students encourage the transformation of an experience and tradition into a form of folklore consisting merely of stories about mice or surprising neighbours? These are some potential questions and concerns. The record before this Court does not make it possible to respond to them. However, the legal situation could change during the existence of the ERC Program.
7. For these reasons and subject to these qualifications, I would dismiss the appeal without costs.

*Appeal dismissed with costs.*

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