



CHRISTIAN LEGAL FELLOWSHIP

— Alliance des chrétiens en droit —

INTEGRATING CHRISTIAN FAITH & LAW SINCE 1978

470 Weber St. N., Suite 202, Waterloo, ON, N2L 6J2 • Ph. 519-208-9200 • Fax 519-208-3600 • www.ChristianLegalFellowship.org

December 9, 2016

Dear Members of the National Assembly of Quebec:

We are writing on behalf of Christian Legal Fellowship (CLF), Canada's national association of Christian lawyers, law students, professors, and retired judges, in relation to Bill 62 – *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for religious accommodation requests in certain bodies*.

The purpose of Bill 62 is to “establish measures to foster adherence to state neutrality” and has special measures with respect to subsidized educational childcare services – which we understand would include faith-based childcare and home-based childcare programs - to ensure that they not teach children a “specific religious belief, dogma, or practice”.

CLF is concerned with the understanding and application of state neutrality in this Bill generally, and particularly as it applies to educational childcare services.

The duty of state neutrality stems from understanding and accommodating freedom of conscience and religion. It requires that the state neither favour nor hinder any particular belief, including non-belief.¹ Creating a neutral public space does not mean the homogenization of private players – childcare facilities included – in that space.²

State neutrality requires the state to encourage everyone to participate freely in public life and demands respect for religious differences:

A secular state does not – and cannot – interfere with the beliefs or practise of a religious group unless they conflict with or harm overriding public interests. Nor can a secular state support or prefer the practices of one group over those of another. [...] A secular state respects religious difference, it does not seek to extinguish them.³

By seeking to extinguish those differences and by favouring non-belief, this Bill violates religious freedom, protected by both the *Charter of Rights and Freedoms*, and the *Quebec Charter*. The Supreme Court of Canada has stated that to tell a Catholic school how to explain its faith undermines the liberty of the members of its community who have chosen to give effect to the collective dimension of their religious belief by participating in a denominational school.⁴ The same principle applies to religious educational childcare centres. It undermines the liberty and religious freedom of those parents who specifically choose religiously-informed childcare.

NGO in Special Consultative Status with the Economic & Social Council of the United Nations

BOARD OF DIRECTORS

Robert Reynolds, President - Québec	Shawn Smith, Vice President – B.C.
Shayna Beeksmas, Secretary - Ontario	Tim Sinnott, Treasurer - Ontario
Philip Milley – Newfoundland	Roger Song - Alberta
Philip Fourie - Saskatchewan	Jessie Legaree (Student) – B.C.
John Lockhart - Ontario	Michal Menear - Ontario

STAFF & SUPPORT TEAM

Derek B.M. Ross - Executive Director
Calvin (Cal) Beresh - Director, Student Ministries
Tim Stonhouse - Regional Director, West
Rev. Reid Cooke - Chaplaincy
Ruth A.M. Ross – Special Advisor

Furthermore, parents are entitled to pass on their beliefs to their children, whether through instruction in the home or participation in communal institutions. This principle is enshrined in international law; most notably Article 18(4) of the *International Covenant on Civil and Political Rights*, 999 UNTS 171 that states:

The State Parties to the present Covenant undertake to have respect for the liberty of parents, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.⁵

Article 14 of the *Convention on the Rights of the Child*⁶ also speaks to the liberty of parents and children as it relates to religion:

1. State Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. State Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of a child.

Section 41 of the *Quebec Charter*⁷ contains a similar provision:

Parents or the persons acting in their stead have a right to give their children a religious and moral education in keeping with their convictions and with proper regard for their children's rights and interests.

These provisions from the *ICCPR* and *Quebec Charter* were specifically affirmed by the Supreme Court of Canada in *Loyola*, which answered the question of how a state should balance protection for religious freedom with the values of a secular state.

In that case, in which CLF intervened as a friend of the court⁸, the Quebec Government refused to allow a Catholic high school to teach Catholicism from a Catholic perspective under the Ethics and Religious Culture (ERC) curriculum. The Supreme Court found this to be a serious detrimental impact on religious freedom, and one that was unlawful. The court set aside the Minister's decision not to grant an exemption, and sent the matter back to the Minister for reconsideration.

Bill 62 attempts to apply a requirement of non-belief on all childcare centres. This requirement is akin to imposing non-belief on a Catholic school. It is a violation of religious freedom and one that does not withstand *Charter* scrutiny under both the *Quebec Charter* and the federal *Charter*.

The government cannot dictate to a religious childcare institution, even one that receives public funding as Loyola High School did, how to teach (or not to teach) the very religion that animates its identity.⁹ To do so would ignore the fact that "an essential ingredient of the vitality of a religious community is the ability of its members to pass on their beliefs to their children, whether through instruction in the home or participation in communal institutions."¹⁰

Regulatory approval must not be denied based on the notion that the state, by its approval is thereby endorsing the beliefs of the institution, individual or daycare provider. Rather, when the state adopts laws it must do so “in the context of making room for diverse communities to hold and act on their beliefs.”¹¹ That diverse community includes faith-based daycare providers that teach specific religious beliefs.

Additionally, the discretion afforded the Minister to “prescribe special terms to govern the application and implementation” of the section regulating subsidized daycare providers gives no guideline or parameters as to what criteria must be met in order to obtain “special terms”. It is thus arbitrary and potentially unlawful.

We urge the government to reconsider this legislation in light of the issues outlined above, and until the legal consequences of these proposed changes are fully considered.

Respectfully submitted,



Derek B.M. Ross, LL.B., LL.M.
CLF Executive Director



Robert Reynolds, B.C.L.
CLF President

For:

Shawn Smith, LL.B.
CLF Vice-President

Jessie Legaree, J.D.
CLF Board Member

Roger Song, J.D., LL.M.
CLF Board Member

Timothy Sinnott, LL.B.
CLF Treasurer

John Lockhart, LL.B.
CLF Board Member

Ruth A.M. Ross, LL.B.
CLF Special Advisor

Shayna Beeksma, J.D.
CLF Secretary

Michael Menear, LL.B.
CLF Board Member

Deina Warren, LL.B., LL.M.
CLF Legal Counsel

Philip Fourie, LL.B.
CLF Board Member

Philip Milley, J.D.
CLF Board Member

¹ *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 at para 72 [“Saguenay”]

² *Saguenay* para 74

³ *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 para 43 [“Loyola”]

⁴ *Loyola* para 62

⁵ (December 16, 1966) 999 U.N.T.S. 171, art. 18, GA Res. 2200A (XXI), 21 UN GAOR, Supp. No. 15, UN Doc. [“ICCPR”].

⁶ Can. T.S. 1992 No. 3

⁷ *Charter of Human Rights and Freedoms*, c. C-12, s.41

⁸ CLF is a non-governmental organization (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations. As part of its NGO status, CLF participates in interventions surrounding the interpretation of laws and government decisions that may engage Canada’s obligations under international law, as in *Loyola*.

⁹ *Loyola*, para. 63.

¹⁰ *Loyola*, para. 64

¹¹ *Trinity Western University v The Law Society of British Columbia*, 2016 BCCA 423 at paras 184-185