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QUEBEC'S ETHICS AND RELIGIOUS CULTURE CURRICULUM: IS
IT CONSISTENT WITH TEACHER AUTONOMY AND CHARTER
RIGHTS?**

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RELIGIEUSE : EST-ELLE CONFORME À L'AUTOMIE
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GARANTIS PAR LA CHARTE?**

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Volume 54, Number 1, Winter 2019

URI: <https://id.erudit.org/iderudit/1060858ar>

DOI: <https://doi.org/10.7202/1060858ar>

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Publisher(s)

Faculty of Education, McGill University

ISSN

1916-0666 (digital)

[Explore this journal](#)

Cite this article

Maxwell, B. (2019). THE PEDAGOGICAL IMPARTIALITY REQUIREMENT IN QUEBEC'S ETHICS AND RELIGIOUS CULTURE CURRICULUM: IS IT CONSISTENT WITH TEACHER AUTONOMY AND CHARTER RIGHTS? *McGill Journal of Education / Revue des sciences de l'éducation de McGill*, 54(1).
<https://doi.org/10.7202/1060858ar>

Article abstract

Quebec's Ethics and Religious Culture program (ERC) requires teachers to adopt a professional stance of pedagogical impartiality. This article examines the complex regulatory framework surrounding the impartiality requirement from the perspectives of teachers' legally recognized right to professional autonomy, their constitutional rights to religious freedom and freedom of expression, and the related issue of impartiality as a pedagogical device when teaching about controversial issues. The paper's brief review of the jurisprudence does not support a decisive answer to the question of whether the legal basis of the impartiality ERC's impartiality requirement is sound. However, it does reveal that the impartiality requirement is more legally fragile than it might appear at first glance.

THE PEDAGOGICAL IMPARTIALITY REQUIREMENT IN QUEBEC'S ETHICS AND RELIGIOUS CULTURE CURRICULUM: IS IT CONSISTENT WITH TEACHER AUTONOMY AND CHARTER RIGHTS?

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ABSTRACT. Quebec's Ethics and Religious Culture program (ERC) requires teachers to adopt a professional stance of pedagogical impartiality. This article examines the complex regulatory framework surrounding the impartiality requirement from the perspectives of teachers' legally recognized right to professional autonomy, their constitutional rights to religious freedom and freedom of expression, and the related issue of impartiality as a pedagogical device when teaching about controversial issues. The paper's brief review of the jurisprudence does not support a decisive answer to the question of whether the legal basis of the impartiality ERC's impartiality requirement is sound. However, it does reveal that the impartiality requirement is more legally fragile than it might appear at first glance.

L'EXIGENCE D'IMPARTIALITÉ EN ÉTHIQUE ET CULTURE RELIGIEUSE : EST-ELLE CONFORME À L'AUTOMIE PROFESSIONNELLE DES ENSEIGNANTS ET LES DROITS GARANTIS PAR LA CHARTE?

RÉSUMÉ. Le programme d'Éthique et culture religieuse (ÉCR) impose à ceux qui l'enseigne une obligation d'assumer une posture professionnelle empreinte d'impartialité. Cet article propose une analyse de l'encadrement réglementaire entourant cette exigence d'impartialité du point de vue du droit des enseignants québécois à l'autonomie professionnelle, leur droit constitutionnel à la liberté d'expression et à la liberté religieuse et l'enjeu connexe de l'impartialité enseignante comme un outil pédagogique disponible aux enseignants lorsqu'ils abordent des questions sensibles en classe. L'examen de la jurisprudence proposé dans ce texte laisse la question ouverte quant à la validité juridique de l'exigence d'impartialité. Cependant, tout indique que l'encadrement réglementaire lié à l'exigence d'impartialité en ÉCR comprend de sérieuses lacunes.

The aim of this paper is to draw attention to certain regulatory difficulties that the standpoint of pedagogical impartiality required by Quebec's Ethics and Religious Culture curriculum (ERC) raises in terms of teachers' professional autonomy and basic legal rights.

Scholarly inquiry on ERC's signature standpoint of pedagogical impartiality tends to cluster around two concerns. The first concern, an interpretive one, centers on the pedagogical soundness of the impartiality requirement and exactly what the requirement means in terms of how teachers are meant to conduct themselves in the classroom (see, for example, Bouchard, 2015; Gravel & Lefebvre, 2012; Lebuis, 2008; Leroux, 2016; Paradis, 2015; Zaver, 2016). The second concern, an empirical one, relates to how ERC teachers understand and use the professional stance spelled out in the ERC curriculum in their day-to-day work and whether they think that the ministerial requirement to teach the ERC curriculum from a standpoint of impartiality is reasonable and acceptable (see, for example, Bergeron, 2012; Bouchard, Desruisseaux & Gagnon, 2011; Gravel, 2017; Jafralie, 2016; Zaver, 2017).

By contrast, this paper focuses on the legal and regulatory validity of the impartiality requirement. Specifically, the question at the centre of this paper is whether the fact that the state requires teachers to adopt a pedagogical stance of impartiality while teaching ERC is compatible with their right to professional autonomy as recognized in education law. Further, is such a stance consistent with teachers' Charter rights to religious freedom and freedom of expression? The paper begins by providing some background information on the content and structure of the ERC curriculum and the curriculum's emergence in the wider context of the latter-day secularization of Quebec's public education system. After detailing the impartiality requirement itself as well as its rationale in the context of a regime of mandatory religious education like ERC, the paper then considers, in light of relevant Canadian jurisprudence, the extent to which the impartiality requirement can be squared with teachers' legally recognized rights to professional autonomy, religious freedom, and freedom of speech. As we will see, the jurisprudence does not provide decisive answers to these questions. However, it does reveal that ERC's pedagogical impartiality requirement is significantly out of joint with key aspects of the broader regulatory framework in which Quebecois and Canadian teachers work. In closing, the paper suggests that the regulatory tensions brought to light here should be seen as an existential threat to the ERC curriculum insofar as pedagogical impartiality has proven to be the ERC programme's best defense against constitutional challenges.

THE ERC CURRICULUM IN THE BROADER EDUCATIONAL CONTEXT OF QUEBEC

Whether enrolled in public or private school, all children and young people in Quebec have opportunities to consider ethical issues and learn about religions via the ERC curriculum. Quebec is the only Canadian province in which the study of religion is required from the first year of primary school to virtually the last year of secondary school. The number of statutory instructional hours

in ERC varies somewhat depending on the year of study but pupils can expect approximately one hour of instruction for ERC per week in their schedule right through mandatory schooling.

The ERC curriculum conceptualizes ethics and religious culture as being complementary knowledge areas favourable to the emergence of two dispositions essential to intercultural citizenship: recognizing that all citizens are entitled to the same respect and rights as oneself and the will to find solutions to societal problems that are in the interest of the common good (Ministère de l'Éducation, du Loisir et du Sport [MELS], 2008, preamble). In curricular documents, these broad educational goals of ERC are labelled "the recognition of others" and "the pursuit of the common good" respectively. Ministry of Education guidelines on the teaching and learning of ERC stipulate that the handling of ethics-related themes and religious issues are to be highly integrated with one another (MELS, 2008, p. 2-3, 8-10). Furthermore, the two broad learning objectives of the ERC curriculum are pursued by way of the development of competencies not only in the areas of ethical reflection and religions but also a third learning area, "dialogue." The dialogue component promotes thinking clearly and honestly about one's own point of view, beliefs, and convictions. It aims to equip young people with skills in presenting and justifying their opinions coherently, and discussing ideas with others in a productive and respectful way. By contrast, the ethics component focuses on understanding ethical concepts like liberty, freedom, autonomy, and tolerance, and helping children and young people acquire the ability to think autonomously, critically, and creatively about current ethical issues. The religions component, for its part, aims to provide children and young people with a body of general knowledge about the major religious traditions that have a significant presence in Quebec society today. The broad goal is to help young people acquire a body of general knowledge or "culture" about religions and religious matters – hence the label "ethics and religious *culture*." In the religions component, special emphasis is placed in the curriculum on Catholicism and Protestantism based on their historical and cultural importance in Quebec. The treatment of Judaism, Islam, Buddhism, and Hinduism and the spiritual traditions of Quebec's original inhabitants or First Nations is also obligatory at one stage or another of the program in recognition of the role that these religious traditions have in the past played, and continue to play today, in shaping Quebecois society.

Consistent with international norms for mandatory religious education in public school systems (see Organization for Security and Co-operation in Europe/ Office for Democratic Institutions and Human Rights [OSCE/OSIHR], 2007), the ERC curriculum prescribes a so-called "cultural" approach to the teaching of religions (MELS, 2008, preamble). This conception of religious education has three defining characteristics (for detailed discussions, see Lucier [2008] and Moore [2012]). First, it is concrete and fact-based. It is centered on observable manifestations of religious faith and practice, not on underlying

doctrines and dogmas. Second, it is comparative. It draws attention to the different ways in which religious commitment is expressed by different religious communities, particularly as they are manifested in pupils' own local social environments. Finally, the cultural approach to religious education is marked by a deferent pedagogical stance. That is to say, teachers are to show respect for the religious traditions they teach about in class. When and if controversies touching on religious matters arise or when pupils express criticisms or doubts about certain aspects of the religions studied in class, teachers are to remain tactful and reserved. In sum, from the point of view of the cultural approach, the goal of religious education is to work against prejudices and misinformation about religions and religious practices and, in this way, to build mutual understanding between citizens. Religious education is neither meant to promote religious faith nor denigrate it either.

THE CURRICULAR REQUIREMENT OF IMPARTIALITY IN THE ERC CURRICULUM

In the text of the ERC curriculum, the guidelines on teacher impartiality are plainly stated. Although all teachers, the curriculum suggests, no matter what subject they teach, have a general professional obligation to deal with socially and politically sensitive issues in the classroom in ways that respect the beliefs and values of pupils and their families, educators responsible for teaching ERC have a "supplementary" duty to show restraint and respect (MELS, 2008, preamble). Teachers must not put forward their personal political, ethical or religious views in class (MELS, 2008, preamble). The curriculum goes on to specify, however, that there is one situation where the teacher not only *may* but *must* abandon the standpoint of impartiality. This situation is when a pupil puts forward views that are inconsistent with either of the two broad educational goals of the ERC curriculum mentioned above: recognition of others and the pursuit of the common good. "Teachers must intervene, and emphasize the aims of the program," the curriculum advances, "in the event that an opinion that is expressed in class attacks a person's dignity or actions that are suggested compromise the common good" (MELS, 2008, p. 12). This statement is sufficiently abstract so as to leave teachers ample room for interpretation in particular cases but in broad outline, the suggestion seems to be the following. Teachers can and should silence and correct pupils when statements they make reveal that they do not fully appreciate that everyone is entitled to fundamental rights and freedoms (like, security of the person and freedom of association) and that everyone too has a right to express their opinions on issues that matter to them and be listened to respectfully by others when they do so.

Of the varieties of teacher impartiality generally recognized in the scholarly literature, then, the kind of impartiality prescribed by the ERC curriculum most closely resembles the role that Thomas Kelly (1986), in his classic paper,

calls “neutral impartiality.” Kelly’s schema, used by multiple scholars as a key conceptual reference point for research and theorizing on teacher impartiality (see, for example, Bouchard, 2015; Gravel & Lefebvre 2012; Hess & McAvoy, 2015; Morris, 2011), identified four perspectives on pedagogical impartiality that teachers and other educationalists, for a host of reasons, find compelling.

One is exclusive neutrality. Very simply, teachers who adhere to the perspective of neutral impartiality in relation to discussing controversial issues in class avoid introducing controversial subjects altogether. They do this, according to Kelly (1986), partly based on a firm belief that it is the responsibility of parents and private communities, not schools, to help young people navigate complex evaluative issues but also because they believe that, for all intents and purposes, it is impossible for them as teachers to guarantee a fair and impartial hearing for all sides in a debate.

A second conception of teacher impartiality in Kelly’s (1986) schema, exclusive partiality, is the mirror opposite of exclusive neutrality. Teachers who adopt this perspective on teaching controversial issues see promoting a particular evaluative standpoint – normally, their own – as consistent with their mandate. Such teachers speak freely of their personal beliefs in front of their students, have no reservations if the presentation of a controversial issue in their class is one-sided, and actively take steps to promote their own point of view and discourage or dismiss dissenting views as illegitimate.

Committed impartiality is the third category in Kelly’s (1986) typology and the perspective on teacher impartiality that Kelly himself favors. Committed impartiality differs from exclusive neutrality in that teachers who adhere to it, rather than shying away from dealing with sensitive issues in class, regard the discussion of controversial issues as an excellent occasion for student to develop skills in critical reflection and argumentation. Committed impartiality resembles exclusive partiality in that it implies that it is legitimate for teachers to disclose to students their own personal evaluative perspectives on the controversial topics addressed in class. The main difference between these perspectives is that, with committed impartiality, instead of advocating for a particular standpoint, the teacher adopts the role that Kelly (1986) calls “a positive ideal” (p. 130). Teachers, that is, model exactly the skills in rational deliberation that they want their students to develop. This approach teaches by example that one can have strongly held personal convictions about an ethically or politically charged question yet still give the matter at hand a fair hearing: by searching out and seriously considering as many perspectives as possible, by carefully weighing the arguments and evidence for and against, by taking a critical distance from one’s own evaluative commitments and by being open to the possibility that one may be wrong and willing to abandon one’s beliefs in the face of contravening evidence.

The fourth and last category in Kelly's (1986) schema – and the one that is most familiar and may be the most popular among teachers – is neutral impartiality. On this view, when controversial issues introduced by the teacher in class are debated and discussed, the teacher's role is akin to that of a referee in a sporting match. The teacher does not take sides and takes pains to ensure that their personal viewpoints on the matter under discussion remain hidden from students. Their proper role is to facilitate the acquisition of critical reflection skills and ensure that the different sides of the issue get as fair a hearing as possible. This perspective on teacher neutrality, Kelly remarks, is animated by an awareness of the teacher's position of authority over students and an ethical concern to avoid undue influence in shaping students' beliefs. It comes as no surprise, then, that exactly this consideration is invoked in the section of the ERC curriculum where its prescribed professional stance of neutral impartiality is presented: "to ensure against influencing students in developing their point of view, teachers abstain from sharing theirs" (MELS, 2008, p. 12).

A SUPPLEMENTARY DUTY FOR ERC TEACHERS

Why does the curriculum impose on ERC teachers this "supplementary" duty of neutral pedagogical impartiality? The reasons are more difficult to identify than it might appear at first glance.

The reason explicitly stated in the main ministerial document that outlines the ERC program relates to the fact that the curriculum calls on teachers to raise questions that pupils and their families may find delicate, controversial, or even offensive. Teachers are required to adopt a professional stance that is respectful towards others' personal or religious commitments surrounding certain sensitive topics and to be discreet about their own views on such controversial matters discussed in class because, the curriculum says, "this subject matter touches on complex and sometimes delicate personal and family dynamics" (MELS, 2008, preamble).

A simple observation – namely, that many educators in addition to those who teach ERC also routinely address controversial social issues in class – renders this *prima facie* satisfactory explanation problematic (Gravel & Lefebvre, 2012). The teaching of history and social studies also provide regular occasions to consider sensitive issues and, in the hands of a skilled teacher, clearly, controversial subject matter can be introduced to enrich the study of literature, the natural sciences, and many other subjects besides. Yet specific prescriptions on the professional stance teachers are expected to adopt are not to be found in Quebec's history or social studies curriculum – nor, for that matter, anywhere else in the provincial curriculum, be it primary or secondary.

Historical factors undoubtedly contribute to this apparent irregularity and the particular concern we find expressed in the curriculum that teachers adopt an

impartial pedagogical stance when teaching ERC. The ERC curriculum was the fruit of a protracted and controversial political process of determining the place of religion and religious education in public schools in the late 1990s and early 2000s in Quebec. At the centre of this debate was the relatively recently recognized Charter right to freedom of religion and conscience and an awareness that Quebec's former system of religiously affiliated public school boards and the denominational religious education provided by public schools amounted to a violation of this fundamental right. Like Quebec society more broadly, the education system in Quebec has been undergoing a slow but steady process of secularization. After the British conquest of New France in 1759, the colonial British government accorded to its new francophone and strictly Catholic subjects a wide margin of control over education as a means of keeping social peace (Brown, 2012). Later, in 1867, the Constitution Act of Canada guaranteed French-language education for the French-speaking majority in Quebec and granted the Catholic Church the right of oversight. The Act also promised English-language education for the English-speaking minority managed by Protestant groups. Hence, two parallel education systems emerged in Quebec: French-Catholic and Anglo-Protestant. Various waves of European migrants through the 19th and 20th centuries, few of whom were French-speaking Catholics, did little to shake this balance. It was not until 2000, and following an amendment to the Canadian constitution in 1997, that Quebec's school boards were redefined along linguistic rather than religious lines (Béland & Lebuis, 2008). The ERC curriculum was developed to complete this process, replacing the curriculum on confessional religious instruction in 2008. As Milot (2010) reminds us, key consideration in reforming the education system was a concern for freedom of religion and conscience. In this context, the state via its confession-based religious education system was widely perceived as violating or inconsistent with the principle of neutrality or, giving preferential treatment to some particular groups while denying it to others. The prescribed pedagogical posture of impartiality we find in in ERC would appear to reflect a deep historical concern for ensuring a clean break from the past legacy of religiously dominated education.

A directly related but more decisive factor that likely motivated framing ERC teachers' duty to adopt a stance of pedagogical impartiality as a statutory obligation connects to very real concerns that the ERC program would face constitutional challenges. Indeed, as Leroux (2016) reported, a central concern of the curricular committees responsible for developing the ERC curriculum was to ensure that it would pass constitutional muster. The main reason why Quebec had to abandon its former confessional system of religious education was because it was deemed by the Supreme Court of Canada to violate pupils and their families' constitutionally guaranteed right to religious freedom (Milot, 2010). Almost certainly following legal advice, the curriculum developers adopted the position of the *Toledo Guiding Principles on Teaching about Religions*

and Beliefs in Public Schools (OSCE/OSIHR, 2007). Principle 7 is “where compulsory courses involving teaching about religions and beliefs are sufficiently neutral and objective, requiring participation in such courses as such does not violate the freedom of religion and belief” (OSCE/OSIHR, 2007, p. 14). By all appearances, the ERC program’s explicit requirement of pedagogical impartiality adheres to this principle to the letter.

Of course, this attempt to build legal protection into the ERC program was not guaranteed to work in the rough and tumble of the judicial system. The test came in 2012. In *S.L. v. Commission scolaire des Chênes* (2012), the Supreme Court of Canada upheld the constitutionality of the curriculum’s mandatory character. The appellants, Catholic parents and their supporters, claimed that by exposing their children to information about religious traditions other than their own the ERC curriculum prevented them from meeting their perceived religious obligation to transmit their religious faith to their children. The curriculum’s required pedagogical stance of impartiality figured in the court’s decision to deny the parents’ claim. Learning about different religions in schools, the judges argued, poses no greater hindrance to the transmission of faith from one generation to the next than everyday life in a pluralistic society.

TEACHERS’ LEGAL RIGHT TO PROFESSIONAL AUTONOMY

In light of the ruling of the Supreme Court of Canada in *S.L. v. Commission scolaire des Chênes* (2012), it may appear that the question of why the Quebec government requires educators who teach ERC to adopt a professional stance of impartiality is an open and shut case. This illusion is shattered when one takes into account this simple observation: the prescribed stance of impartiality applies not just to the world religions segment of the curriculum but to the two others – ethics and dialogue – as well. Is there a legal basis for extending the impartiality requirement to the whole program?

The requirement that educators remain impartial in class and refrain from sharing their personal views on controversial issues with their pupils appears to directly contravene the rights of teachers as they are stated in Quebec’s education law. The Education Act explicitly accords teachers a right to professional autonomy when it comes to the choice of teaching strategies. “In particular, teachers have the right,” the Education Act reads, “to take the pedagogical measures that match the needs and fixed aims for each group of pupils or each pupil entrusted to him” (Education Act, 2018, c. 2, d. II, s. 19).¹ In effect, this section of the Education Act sets out the respective mandates of the Ministry of Education and teachers in carrying out the responsibility to provide educational services. Whereas the government’s remit is to specify what is taught in schools, the role of teachers is to select the pedagogical means by which the curriculum is taught.

Notwithstanding teachers' nominal right to professional autonomy when it comes to deciding how to conduct their class from a pedagogical standpoint, when this legal right comes into conflict with other regulatory considerations, it is routinely overridden (Jeffrey & Harvengt, 2017). A case in point are the reforms to the regulatory framework around instruction and evaluation known as the "*renouveau pédagogique*" (curricular renewal). These reforms introduced a statutory competency-based framework for assessing pupil learning and, intimately linked to the competency approach, require teachers to adopt a project-based approach in their teaching. Considering that, for all intents and purposes, these new regulations make adopting certain specific "pedagogical measures" mandatory, as Trottier (2006) has argued, these reforms clearly erode the teacher's right to professional autonomy as stipulated in the Education Act. Another case in point is the record of legal rulings on teacher autonomy as it relates to labour law. Daviault (2002) and Jeffrey and Harvengt (2017), in their reviews of the jurisprudence, concurred that the courts have consistently prioritized teachers' obligation to respect a superior's directives in the workplace, this over their right to professional autonomy in selecting teaching methods.² Given this background, then, the encroachment of the ERC curriculum's prescribed posture of impartiality on teachers' legally recognized right to pedagogical autonomy is hardly exceptional. In fact, it is consistent with a broader pattern of regarding this right as a highly circumscribed and limited one.

TEACHER IMPARTIALITY: A PEDAGOGICAL TOOL?

A possible objection to the notion that the ERC impartiality stance encroaches on teachers' statutory right to professional autonomy is that this stance falls outside the scope of "professional autonomy" as defined by the Education Act. The Education Act says that teachers are free to select the pedagogical means that they consider to be appropriate to pursuing the official curriculum. But teacher impartiality is not a pedagogical method as such, one could reasonably claim; rather, it is an attitude towards teaching about sensitive issues that embodies some of the very intellectual virtues of open- and fair-mindedness, respect for other's opinions, and confidence in reasoning that the curriculum is meant to promote. Furthermore, even if impartiality can be considered a "pedagogical method" in the sense of educational law, the fact that one has a legally recognized right as a professional does not imply that one is required to exercise it, especially if doing so goes against one's best professional judgement. Perhaps the authors of the curriculum are right to insist on the pedagogical value of teacher impartiality given the parameters of the ERC program – most notably, the controversial nature of the topics discussed, the key educational goal of developing pupils' critical thinking skills, and pupils' purported psychological vulnerability to having their opinions swayed by the views of the adults around them. This section responds to these objections by

putting forward that impartiality should, in fact, be considered as a pedagogical tool, one that simultaneously calls into question the wisdom of the blanket prescription of pedagogical impartiality found in the ERC curriculum.³

To this end, I invoke the results of an in-depth research program on teachers' professional experience of withholding and disclosing their own political views on controversial social issues in class led by Dianna Hess (see Hess, 2010; Hess & McAvoy, 2015). This extensive classroom-based inquiry has shown that while teachers vary significantly in their commitment to impartiality and their skills in executing it, all but the most ardent defenders of "neutral impartiality" in Kelly's (1986) sense concede that there are occasions in the course of teaching about controversial issues when it is necessary to abandon an impartial stance (Hess & McAvoy, 2015).

One such moment comes when a teacher wants to demonstrate the virtue of intellectual responsibility, to show students that it is possible to have an opinion about a contested issue and yet still engage in a balanced and critical examination of the evidence for and against. The ideal here aligns with Kelly's (1986) recommendation of "committed impartiality." The option of intentionally departing from the standpoint of neutral impartiality in these terms gives teachers a way to teach their students using themselves as a model, and to exemplify that working through controversial questions is not just about reasoning and knowing the facts but learning to recognize and manage one's own emotional responses to the issues at stake (see also the discussion of this issue in Noddings [1993] and Warnock [1975]).

Another reason to breach impartiality in a teaching situation is for the sake of authenticity. Especially when discussing a topic that nearly everyone feels strongly about, a teacher's insistence on adhering to a neutral standpoint risks sending the message that the discussion is, in Warnock's (1975) words, merely "play acting." In these circumstances, teacher impartiality risks being perceived as disrespectful to the topic and to the others present in the room and, for these reasons, potentially an impediment to a forthright and meaningful exchange of ideas.

Finally, teachers sometimes decide to step out of the role of objective mediator out of concern for student wellbeing. It can happen in classroom discussions of controversial issues that a small minority of pupils find themselves defending a particular side of an issue. When this occurs, these pupils face strong intellectual and social pressure to either concede to the majority or fall silent. And if the topic is sensitive enough, there is a danger that the social dynamic created in class by the teacher will spill over into non-teaching situations – after school or during breaks – over which the teacher has little or no control. To protect such pupils from being ostracized, and to keep the debate moving forward, one option open to a teacher is to strategically exercise their authority by taking the side of the students who hold the minority view.

In sum, the teacher's perspective on this issue, valuably highlighted in Hess's work (i.e., Hess, 2010; Hess & McAvoy, 2015), helps us see that impartiality may best be understood as a pedagogical tool. Sometimes, very often even, it helps promote students' engaged and critical thinking about contested and complex issues. At other times, however, slavishly adhering to it is not necessarily in students' best educational, personal, or social interests.

TEACHERS' CHARTER RIGHTS

Whatever the final word may be on how to interpret and apply the ideal of teacher neutrality in teaching situations, if the curricular requirement of impartiality in ERC merely violates teachers' notoriously limited right to professional autonomy – and especially if the requirement can be reasonably seen to serve some legitimate pedagogical purpose in the context of the ERC course – then the government's legal basis for maintaining it appears strong. In constitutional democracies like Canada, however, there are some rights that are considerably less flexible than the teacher's right to professional autonomy. These, of course, are the individual rights recognized in the *Charter*. Clearly, if the impartiality requirement were found to violate any of these rights, then there would be grounds to consider it unconstitutional and, in this case, the state could be legally compelled to remove it from the curriculum.

Let us consider briefly, then, whether the impartiality requirement might be seen as a violation of two relevant constitutional rights that belong to teachers as private citizens: the right to religious freedom and the right to freedom of expression.

Religious freedom

As it happens, the issue of whether the ERC curriculum's mandatory pedagogical stance of impartiality might violate teachers' right to religious freedom was considered in the ruling of the Supreme Court of Canada in the so-called Loyola affair (*Loyola High School v. Quebec*, 2015). In this case, the key question before the court was whether the ERC program's requirement that Catholicism be taught from a neutral standpoint in a private Catholic school violated the religious community's Charter right to religious freedom. As noted above, Catholicism is one of several world religions comprising the religious education segment of ERC. Part of the school's educational mission, after all, is to promote Catholic beliefs, practices, and values among its students.

In the dissenting opinion, the judges suggested that the Loyola case opened the possibility that religiously committed ERC teachers had grounds to claim that the obligation to present world religions – their own as well as other religions – from a neutral standpoint violated their right to religious freedom. "To the extent that the ERC Program would require Loyola's teachers to express a neutral viewpoint on religious matters," the dissenting judges remark in their

analysis of Loyola High School's claim to religious freedom, "their religious freedom may be at issue" (p. 130). The judges' reasoning seemed to be that a religious teacher could sincerely regard promoting their religion as a religious obligation and, in such cases, any government regulation prohibiting them from fulfilling this obligation could be considered to undermine their right to religious freedom.

The majority opinion, while not explicitly ruling out this possibility, focused the discussion of teachers' rights more narrowly on whether the rights of religious teachers working in a private religious school are transgressed by having to teach religions other than their own from a neutral standpoint (*Loyola High School v. Quebec*, 2015, para. 61ff). Here, the judges recognized that, for such teachers, teaching other religions "will not always be easy" (*Loyola High School v. Quebec*, 2015, para. 77) but they did not see this practical impediment as sufficient grounds for concluding that doing so amounts to a violation of the right to religious freedom. Judge Abella writes:

[C]an requiring Loyola's teachers to teach and discuss other religions and their ethical positions as objectively as possible really be seen as a serious interference with freedom of religion merely because it may be difficult to execute neatly?

I have difficulty seeing how this can undermine the values of religious freedom. I do not dispute that the belief systems Loyola's teachers are required to explain to their students [i.e., those of other religions] may not reflect their personal beliefs, or Loyola's institutional allegiances. But teaching about the ethics of other religions is largely a factual exercise. It need not be a clash of values. Nor is asking Loyola's teachers to teach other religions and ethical positions as objectively as possibly a requirement that they shed their own beliefs. It is, instead, a pedagogical tool utilized by good teachers for centuries – let the information, not the personal view of the teacher, guide the discussion. (as cited in *Loyola High School v. Quebec*, 2015, para. 77-78)

The precedent set in the Loyola judgement, then, is that the impartiality requirement as it applies to the teaching of a particular religious tradition in a confessional school transgresses the right to religious freedom of the school as a religious community. In addition, the impartiality requirement transgresses the religious freedom of parents who have chosen an education for their children in accordance with their religious commitments. It is also clear from the judgement that the government's demand that educators teach about other religions from a neutral standpoint in a private religious school is consistent with teachers' Charter right to religious freedom. The worrisome question that the Loyal ruling leaves open, however, is whether the obligation to adopt an impartial stance when teaching about one's own religion in a secular educational setting – i.e., in public schools – could be grounds for objection on the part of a religious teacher. A religious teacher (or even a militant atheist for that matter) could object that the stance of impartiality violates their right to religious freedom or freedom of conscience.

Freedom of expression

What about teachers' right to freedom of expression, then? In Canada, high court jurisprudence exists which suggests that, in certain circumstances, an ERC teacher's choice to depart from the curriculum's prescribed professional stance of impartiality could be protected by the teacher's Charter right to freedom of expression. One such circumstance is that in which an ERC teacher has students work with material that is critical of certain dimensions of a particular religion's worldview. As is well known, sexist, patriarchal, and even misogynistic attitudes can be seen as incarnated in the practices and sacred texts of many, if not all, of the world's major religious traditions. Particularly in a class that has as one of its primary aims the development of pupils' competency in "reflecting on ethical questions," leading students to reflect critically on sexist religious practices may strike some teachers as an excellent opportunity to raise issues of gender equality, thus integrating the ethics and religious culture components of the curriculum (cf. Conseil du statut de la femme, 2016, p. 54ff). In fact, very similar considerations led to the court proceeding that legal scholars regard as the most important precedent on teachers' curricular free speech in Canada, namely *Morin v. Reg. Admin. Unit #3* (2002). The teacher at the centre of this case, Richard Morin, a Grade 9 language arts teacher working in Prince Edward Island, spent over a decade fighting his employer in the courts over his right to present a critical perspective on Christian fundamentalism in his class. Morin had screened a BBC documentary on the influence of Christian fundamentalism on US politics. Viewing the film was intended as the initial phase of a learning activity that aimed to have his students reflect on how people's religious commitments can impact their thinking in many spheres of life. Had it gone ahead, the activity would have had students interview members of the local community on the issue of "what religion means to me." In response to complaints about the video, it became immediately clear that some of Morin's students saw the film as an affront to their and their families' religious beliefs. The school administration ordered Morin not to show the rest of the documentary and to cancel the connected activity. At some point, Morin and the school's vice-principal exchanged harsh words, and the tense work situation apparently prompted Morin to take sick leave. The project was ipso facto cancelled, Morin was eventually placed on paid leave, and at the end of the school year, Morin was informed that his temporary contract would not be renewed.

The outcome of this dispute was a split decision by the Prince Edward Island Court of Appeal which overturned the school board's decision and granted Morin's grievance on the grounds that Morin's constitutional right to free expression was protected in this case. Referring to previous Canadian jurisprudence in which the fundamental right to free expression was central, Judge Webber summarized the view of the majority opinion poignantly by stating, "surely teachers engaged in their profession of teaching can't be found to

have no right of free expression, while advertisers do have such a right, and even prostitutes carrying out their profession have such a right” (*Morin v. Reg. Admin*, 2002, para. 24).

The potential consequences of *Morin v. Reg. Admin* (2002) for the legality of the impartiality requirement in the ERC program, then, are weighty. Morin’s take-home message is that teachers have the right to use material, raise topics, and make statements in class that may be controversial or considered offensive by some on the condition that they do so in a way that is clearly aligned with some officially sanctioned curricular objective. In the Morin case, this curricular objective was the promotion of critical thinking (for analyses and commentary on the Morin case, see, for example, Clark & Trask [2006] and Waddington [2011]).

However, there is an arguably crucial difference between the circumstances of the Morin case and the hypothetical situation of an ERC teacher electing to use free expression and eschew teacher neutrality in pursuit of some legitimate curricular goal. The difference is that the curriculum’s prescribed stance of impartiality requirement is itself explicitly positioned as serving the very curricular aim of developing pupils’ skills in independent critical reflection. Be that as it may, one of the highest levels of the Canadian justice system has been willing to offer constitutional protection to a teacher who exercised his professional autonomy in pursuit of a worthy and state-sanctioned educational goal. Would it do the same in the case of an ERC teacher who, with similarly noble pedagogical intentions, opted to depart from the posture of neutrality? Given the relevance of Morin to the issue that concerns us here, the question remains open.

CONCLUSION

This paper’s examination of the regulatory framework surrounding the ERC’s statutory pedagogical stance of impartiality reveals, in sum, that the program faces an uncomfortable paradox. As indicated in the *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* (OSCE/OSIHR, 2007), if a public education system like Quebec’s wants compulsory religious education, then the impartial teaching about religions and religious beliefs must be officially mandated. But, as this paper has argued, the blanket prescription of impartiality constitutes further erosion of teachers’ fragile legal right to professional autonomy, goes against research-based expert opinion on impartiality as a pedagogical tool, and may interfere with teachers’ fundamental rights to freedom of religion and expression. All this points to a troubling conclusion: Quebec may not be able to have its mandatory religious education cake and eat it too.

NOTES

1. The Education Act (2018) also asserts that teachers have a general duty to pedagogical impartiality when it puts forward acting “in a just and impartial way in their relations with their students” as the fourth of teachers’ eight “duties” (c. 2, d. II, s. 22). The correct interpretation of this section, however, is as an admonition to avoid discrimination in the provision of educational services rather than to adopt a pedagogical stance of impartiality in handling controversial social issues in class. The ethical duty to pedagogical neutrality is a relatively common feature of codes of ethics for teachers in Canada (Maxwell & Schwimmer, 2016), but no code comparable of ethics exists at the provincial level in Quebec.
2. An interesting justification for the prioritization of the duty to respect the workplace hierarchy over teachers’ right to professional autonomy recurs in this jurisprudence. Certain judges have argued that limiting teachers’ professional autonomy in this way is consistent with the broader legal provisions that exist to ensure that children’s right to education is respected. Specifically, the view of these judges is that the obligation to educate society’s children, which is held in trust by the government, delegates the responsibility to educate down through an administrative hierarchy running from the Ministry of Education through the school boards and its principals and finally to classroom teachers. According to this interpretation, teachers work at the point where the education system interfaces with the public but the responsibility to educate, including the responsibility to make decisions about instructional and evaluation methods, is one that teachers share with other stakeholders in the education system. What this means is that a teacher’s professional judgment with respect to the best interests of the students never trumps what the state or its agents decide is in the best interests of those same students.
3. Of course, the issue of teacher neutrality raises a host of complex questions that cannot be addressed in this paper. Among them are the political and moral questions of the scope and limits of liberal democratic states’ right to use the education system to inculcate beliefs and values (see Redish & Finnerty, 2002), and the conceptual question of what exactly “teacher neutrality” means or implies (see Kelly, 1986; Noddings, 1993; Reboul, 1977) along with distinctions between and among connected concepts like “impartiality,” “objectivity,” and “neutrality” (see Gravel & Lefebvre, 2012). There is also the psychological question of whether adopting a stance of strict neutrality (or impartiality) in teaching is even possible (see Dearden, 1981; Warnock, 1975).

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