



Fédération
des comités de parents
du Québec

**Denominational religious instruction in public
schools in Québec**

**Choices further to expiry of the notwithstanding clause
in
June 2005**

Briefing Document

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A. Preamble

Historically, public schools in Québec have always offered students

- Catholic religious instruction
- Protestant religious and moral education

Even before the Canadian and Québec Charters of Rights and Freedoms were adopted, this arrangement was already raising the question of the rights of individuals and of other groups of religions or groups with no religious affiliation. This is why another option was introduced within the curriculum, namely:

- Non-confessional moral education.

Despite the addition of moral education available to all, the Catholic majority and the Protestants have an advantage not granted to other religious denominations – customized denominational religious instruction in the public school system, in contravention of the Québec Charter of Human Rights and Freedoms adopted in 1975 and of the Canadian Charter of Rights and Freedoms entrenched in the Constitution in 1982. This is why derogation was necessary. Without it, Québec would have left itself open to human rights complaints, litigation, and international rulings.

An override of the Canadian Charter cannot exceed five years. That obtained by the Government of Québec in 2000 will therefore expire in June 2005. This means that the National Assembly of Québec will have a decision to make.

B. Background

1. A few fundamental notions

Human rights

Any deliberation or work on denominational religious instruction in schools necessarily took into account the principles that underpin the charters governing human rights and freedoms. In fact, it is precisely on this front that Catholic and Protestant denominational religious instruction in school poses a problem.

Canada's and Québec's Charters of Rights and Freedoms proclaim principles that must comply with all legislation. These charters therefore contain the foundations for a just, egalitarian and peace-loving society, including **non-discrimination on the basis of religion** as well as the **obligation to treat people equally regardless of their religion**.

Such principles provide protection for all individuals, whether they belong to minorities or not, and enshrine Canada's and Québec's recognition that all human beings are equal in value and dignity and are entitled to equal protection under the law. The spirit of the charters is thus directed towards an ideal of justice and peace.

The charters enshrine freedom of conscience and of religion.

Freedom of religion

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to certain necessary limitations, no one is to be forced to act in a way contrary to his beliefs or his conscience.
(Canadian Legal Information Institute)

One of the founding principles of the charters is equality. This was precisely the impetus for Québec's recourse to a notwithstanding clause in order to keep Catholic

and Protestant religious instruction in public schools. In other words, without this notwithstanding clause, any other religious group could file a complaint with the Human Rights Commission. This is how Catholics and Protestants became entitled to a privilege (denominational instruction in public schools) that numerous other religious groups representing thousands of people were refused (see Appendix 1). Another feature of this portrait of religious diversity is the ever-growing number of people who say they have no religious affiliation (Statistics Canada's figure was over 400,000 in 2001).

Section 41 of the Québec Charter

Denominational religious instruction in public schools is based on section 41 of the Québec Charter, which states that:

parents or the persons acting in their stead have a right to require that, in the public educational establishments, their children receive a religious or moral education in conformity with their convictions, within the framework of the curricula provided for by law.

Clearly, this section is central to the debate on the place of religion in schools, hence the importance of understanding its meaning and scope, notably from a legal vantage point. The fact is that section 41 does not refer to a fundamental right because it figures under the heading Economic and Social Rights. For legal experts, the nuance is very significant. Since section 41, unlike the sections on fundamental rights, does not concern a fundamental right per se, it is not restrictive.

Furthermore, even if it did constitute a fundamental right, compliance with section 41 would oblige all public schools to offer, upon request, any religious group whose numbers warranted it religious instruction in keeping with the convictions of its members, thereby respecting human rights and the principles of equality and non-discrimination. On these grounds, many groups could argue that they are victims of discrimination, to say nothing of the fact that there is no watertight definition of religion in Canada. This could leave the door wide open for disputes involving not only numerous recognized religious groups, but other groups that define themselves as having a spiritual vocation (Raelians, voodoo, etc.).

In order to respect the principles of equality and non-discrimination proclaimed in the Canadian and the Québec charters, ALL parents of ALL religious denominations would have to be entitled to confessional religious instruction for their children within the public school system. Québec's public schools offer confessional religious instruction only to Protestants and Catholics, the compromise being to offer all other students (believers and non-believers) non-confessional moral education. Even if Catholics are in the majority in Québec, and even if Protestants are in the majority in Canada, in constitutional and therefore legal terms, the situation is discriminatory for all other religious persuasions. The notwithstanding clauses prevent damaged parties from filing a complaint on the grounds of unequal treatment. Virtually all the literature on the subject emphasizes that recourse to the notwithstanding clause is a temporary solution.

2. Overview of ten years of consultation, analyses and decisions

In recent years, denominational religious instruction has been the subject of analysis, consultation and decision-making:

- 1995-96: *Estates General on Education*, whose Commission's final report recommends that the move towards deconfessionalization of the school system be continued
- 1998: Status of school boards transformed from confessional to linguistic
- 1999: *Religion in Secular Schools: A New Perspective for Québec* (Proulx Report); Report of a Task Force commissioned by the government to examine the place of religion in schools, which also recommends abolition of Catholic and Protestant religious instruction
- 2000: Commission on the place of religion in school
- 2000: Adoption of Bill 118 aimed at:
 - preservation of the right of elementary- and secondary-level students to choose between Catholic or Protestant religious instruction or moral education (renewal of the notwithstanding clause)

- local ecumenical programs or local ethics and religious culture programs to Cycle One Secondary students in the schools that wish to offer these programs
- a mandatory religious ethics and culture program for Cycle Two Secondary students
- creation of spiritual care and guidance and community involvement services to replace pastoral animation services for Catholics and religious animation services for Protestants
- abolition of the confessional status of schools
- creation of the *Comité sur les affaires religieuses* (mandated to advise the Minister of Education on all matters related to the place of religion in schools)

C. Key documents

C.1 Final report of the Commission of the Estates General on Education (1996)

The Commission of the Estates General on Education examined the debate between the supporters of confessionality and those of secularism. In the end, a majority of its members opted to "continue moving toward a non-confessional system" because it constituted a "social choice" in what in fact is a "pluralistic, secular society," based on two fundamental principles: equality before the law and non-discrimination, since:

to maintain schools that are both confessional and all-inclusive, we must go against the Québec Charter of Human Rights and Freedoms, which means, to an extent, subjecting the values of some citizens to the majority choice of others. Even if discreet, such an application of the confessional educational project, once included in the Education Act, is potentially discriminatory (p. 50).

The Commission made the four following recommendations:

1. Transform confessional school boards into linguistic school boards.
2. Undertake action to have section 93¹ of the Canadian Constitution repealed with a view to abolishing existing confessional structures and mechanisms.
3. Encourage groups currently holding confessional guarantees to introduce mechanisms that will enable all Christian education to be dispensed in places more appropriate than the schools.
4. Reinforce values and civic education as well as knowledge of the religious phenomenon from a cultural viewpoint, and provide civic support services.

¹ *Section 93 of the Canadian Constitution guaranteed the confessional status of schools in Montréal and Québec City and the right of religious dissent of Protestant and Catholic religious minorities. It was repealed in the 1990s.*

C.2 *Religion in Secular Schools: A New Perspective for Québec* (Proulx Report).
Report of the Task Force on the Place of Religion in Schools in Québec (1999)

The Task Force was mandated by the Minister of Education to examine the issue of the place of religion in schools, define relevant directions for actions, and propose means of implementation.

The report presents considerations and analyses of fundamental rights. It concludes that the State must be neutral in matters of religion, more specifically, that it is the "state's duty to abstain from taking a stand in favour of or against a particular set of religious beliefs." (p. 78) It goes on to say that the principle of the fundamental equality of citizens is the very foundation of a democracy such as Québec. This is why the Report quotes the preamble of the Québec Charter of Human Rights and Freedoms:

Whereas all human beings are equal in worth and dignity, and are entitled to equal protection of the law;

Whereas respect of the dignity of the human being and recognition of his rights and freedoms constitute the foundation of justice and peace

The Task Force deemed that "it is of the utmost importance that public education, one of the strategic channels for human rights education, be consistent with this fundamental value which Québec included in the choices it made as a society." It points out that the *Universal Declaration of Human Rights* defines the ultimate goals of education as including both "the full development of the human personality and . . . the strengthening of respect for human rights and fundamental freedoms." (p. 74)

The report explains that the "councils and organizations responsible for advising the Government of Québec and the Commission des droits de la personne et des droits de la jeunesse view all citizens as equals, regardless of their race or religion, and view this equality as one of the fundamental principles of our society. None of these bodies (with the exception of the Catholic Committee) felt it was relevant to make an exception to this principle for the school system." (p. 171)

In its consultations, the Task Force received opinions from a few non-Christian denominations that argued that our school system must be based on the principle of equality. These opinions were particularly important for the Task Force because it felt that "when it comes to the right to equality, we must first consider the opinion of the minorities," as is the case with autistic children, persons with disabilities, visible minorities, and so forth.

The Task Force polled parents as to their preferences with regard to religious education, according to their religious affiliation (p. 154):

<i>Religious affiliation</i> ⇒	Catholics	Protestants	Other denominations	No religious affiliation
<i>Types of religious education</i>				
↓				
• Catholic or Protestant only	28.9	14.6	5.8	1.9
• Individual denominations	17.9	8.1	12.1	3.1
(denominational viewpoint)	46.8	22.7	17.9	5.0
• Cultural focus, the same for all students	44.2	63.8	55.6	56.6
• None	7.9	12.7	25.2	38.0
(secular viewpoint)	52.1	66.5	80.8	84.6
• No opinion	1.2	0.8	1.4	0.3

The consultation also made it possible to evaluate the extent to which parents agreed with the three religious education options for public schools (p. 143).

<i>Religious affiliation</i> ⇒	Catholics	Protestants	Other denominations	No religious affiliation
The State should				
• Maintain rights and privileges for Catholics and Protestants only	21.4	12.2	7.9	4.2
• Grant the same rights and privileges to the other religions	50.8	55.1	54.4	21.1
• Grant no rights and privileges to any religion	24.1	27.5	35.6	72.3

As for maintaining the confessional privileges granted to Catholics and Protestants, the Task Force argued that this option encouraged the idea of "us" and "them," which runs counter to Québec's choices and orientations, and that giving the religion of the majority preferential treatment goes against Québec's and Canada's human rights commitments (International Covenant on Civil and Political Rights).

The Task Force analyzed three options for religious education in public schools, and deemed one of the three acceptable.

<p>Religious instruction in each denomination and the study of religions from a cultural perspective (options)</p> <ul style="list-style-type: none"> • <i>Would not be consistent with the social goals of promoting openness to diversity and social cohesion.</i> • <i>Would meet current expectations, only to a very limited extent within majority groups and, even less so, within minority groups.</i> <p style="text-align: right;"><i>UNACCEPTABLE</i></p>
<p>No religious instruction of any kind (only moral education)</p> <ul style="list-style-type: none"> • It is contrary to the objectives pursued by the state as regards providing citizens with a complete education. • It is not compatible with Québec's social goals of promoting openness to diversity and appreciation of differences. • It is supported only by a minority, even among those with no religious affiliation. <p style="text-align: right;"><i>UNACCEPTABLE</i></p>
<p>Offer to all students courses on the study of religions from a cultural perspective instead of religious instruction courses.</p> <p>As a community service, provide facilities to those religious authorities that wish to offer religious instruction to students outside regular school hours, given that this form of education falls outside the jurisdiction of the state.</p> <ul style="list-style-type: none"> • It is in keeping with the principles and objectives that must guide the state in religious matters. • It is in keeping with the legal principles set in the Charters which guarantee equality for all and freedom of conscience and religion. • It is consistent with the social goals of building a common civic space and of preparing young people for life in a pluralistic society, where the various religions are seen as enriching the common heritage. • It provides what is, in our view, an acceptable compromise between the expectations of parents and those of other school stakeholders. It seems to reconcile the two prevailing views on the place of religion in schools. <p style="text-align: right;"><i>MOST ACCEPTABLE OPTION</i></p>

C.3 Brief by the QFPC on the place of religion in school: A responsibility shared with parents (1999)

After release of the Proulx Report and consultation of its members, the Federation presented a brief to the Commission de l'éducation (1999) outlining the opinions of its Parents' Committees. Unfortunately, many respondents felt the questions were not clear, the questionnaire was too complex, and information was lacking. Nonetheless, 40 Parents' Committees out of 82 took part in the consultation. The results thus obtained were used to produce the brief that contained the following statements:

- Parents and the State must share responsibility in matters of the place of religion in school.
- The right of parents to choose between Catholic or Protestant religious instruction or non-confessional moral education must be preserved.
- The right of parents to choose the confessional or non-confessional status of their school must be preserved.
- The Catholic religious instruction and the Protestant moral and religious education programs must be adapted to reflect current realities.
- Parents must be consulted when Catholic religious instruction and the Protestant moral and religious education programs are reformed.
- Study of religions from a cultural perspective must be instituted as an option for secondary-level students and elementary-level students where numbers warrant it.
- If logistics do not allow the former, include components of a cultural perspective program within the secondary-level curriculum.
- Religious and spiritual support services must be introduced.
- Religious education in schools must be preserved.

*C.4 A New Approach to Religious Education in School. A Choice Regarding Today's Challenges
Brief to the Minister of Education. Comité sur les affaires religieuses (CAR)
(2004)*

This committee (which replaces the former Catholic and Protestant Committee) states that the status quo in matters of religious education in school is no longer viable for the following reasons:

1. "An ever-growing minority of young people who opt for moral education do not have the opportunity to acquire the basic religious knowledge that, now more than ever, is essential to understanding culture, acknowledging diversity, participating in democratic debate and exercising critical judgment." (p. 2)
2. The option system "has ended up discriminating among students on the basis of their secular or religious belief systems, and does so at a time when the education community's efforts are focused on developing young people's capacity for dialogue while being respectful of differences." This system of options also fails to promote continuity between moral education and religious instruction, and creates practical scheduling problems.
3. "Religious instruction and moral education are confined to a subject area (personal development) that has been marginalized and made increasingly precarious," which has meant that there is a severe shortage of teachers qualified to teach it.
4. Many people are still dissatisfied with these programs.

The CAR has proposed creation of a new religious education program, distinct from denominational religious instruction and moral education, because it feels that "it is increasingly clear to the vast majority of people that the transmission of religious beliefs is first and foremost the responsibility of families and religious organizations." (p. 10)

The religion program as proposed by the CAR promises to "help students acquire important learning that allows them to construct identity and to successfully participate in community life. This learning includes taking a stance on beliefs,

knowledge and acknowledgement of other, reflecting on one's own convictions, and reconciling the social affirmation of identity with civic mindedness." (p. 14)

A program of this kind would require a common educational path for all students, through the start of elementary school up to the end of secondary school. It would be the opportunity to "bring together students of all religious and secular convictions," and would "also have the considerable advantage of simplifying school organization at the elementary and secondary levels, while avoiding wasting time at the elementary level due to students' moving to separate classrooms for different subjects." Instituting a program of this kind would be demanding and involve the creation of specific teacher training programs for all future religion and ethics teachers. While waiting for a common educational path to be set up, the CAR "thinks that it would be better to maintain the current programs." The Committee also insists on how important is for the government to no longer be required to resort to notwithstanding clauses, notably because they jeopardize this type of teaching.

The CAR's proposal would mean that religion and ethics would be dispensed separately at the elementary level but combined at the secondary level. It goes on to recommend that the acquisition of compulsory credits in these subjects (religion and ethics) be included in the certification of studies.

D. Current context

Citizens' viewpoints

Public perception of the place of religion in school seems to have changed a fair amount in recent years. Catholic and Protestant religious instruction in Québec schools is an option espoused by only a minority of individuals. A recent survey showed that over half of Quebecers and Canadians feel that schools should cover all the major religions instead. The same survey indicated that slightly less than one third of Quebecers and Canadians think that religion should not be taught in school.

	<i>Québec</i>	<i>Canada</i>
<i>Schools should teach Christianity only because the majority of citizens are Christians.</i>	19%	11%
<i>Schools should teach all the major religions.</i>	52%	56%
<i>Religion should not be taught in school.</i>	28%	31%

Data from June 2004, Centre de recherche et d'information sur le Canada

Bones of contention

Furthermore, many people feel that the current situation is generally unsatisfactory. Findings from recent literature include the following:

- Those who advocate the preservation of Catholic or Protestant religious instruction say they are dissatisfied with the quality of teaching, would like the program to be updated and are worried that the number of genuinely qualified teachers in the field will dwindle over time as the new generation of teachers takes its place.
- Decision-makers are uncomfortable with Québec's marginal position compared to the other provinces and the United States, especially its preferential treatment of Catholic and Protestant religious instruction in a secular, pluralistic society that is doing all it can to encourage immigration to counteract Québec's demographic plunge and to integrate immigrants.

- The growing number of people who have no religious affiliation are also in an awkward situation. If their children are enrolled for moral education, they are swimming against the current, but if they are enrolled for denominational religious instruction, the parents must help with homework or be part of other activities that are, to varying extents, inconsistent with their beliefs.

In addition is the predicament of the schools themselves, which must attempt to fulfil their mission of socializing children without the right time or place to develop a set of common values for all children, regardless of their family's religious convictions or lack thereof.

E. Conclusion

Denominational or confessional religious instruction cannot be compared to the teaching of French, music or English, for example. In fact, the word "confessional" suggests faith and therefore the act of belonging to a religion. It touches on a sensitive nerve - the fundamental freedom of the individual, hence an approach based on charters that state that citizens cannot be discriminated against on the basis of their religion and that they must be treated equally, beyond all religious considerations. By definition, the rights and freedoms of individuals are for everyone. By definition, rights and freedoms are intended to protect individuals or groups in the minority (disability, age, race, etc.). Since the State is the guardian of these rights and freedoms, it would be hard pressed to defend any of its institutions and laws that violate these rights. This is why the Comité sur les affaires religieuses states in its final report that the current situation is no longer viable.

What will the Government choose?

The Québec government will have a decision to make come June 2005. There are three options:²

- ◇ Keep the status quo and therefore renew the notwithstanding clause.
- ◇ Institute denominational religious instruction for any religious group whose numbers warrant it.
- ◇ Offer students a non-denominational program on religions and values and therefore give the responsibility for the religious education of children back to families and religious institutions.

The question of religion is one that concerns anyone who has thought about the role that schools play in the life of every child, of the family and of society as a whole. We hope that this rather brief overview of the issue has given each of you new insight that will clarify your vision of what you want for children in Québec.

² Appendix II summarizes the analysis of these three options by the Conseil des relations interculturelles (CRI). (Brief presented to the Minister of Relations with the Citizens and Immigration, March 26, 2004)

Appendix I

Religious plurality, Statistics Canada, 2001

	Numbers	Percentage
Total population	7125580	100.00%
Catholics	5989710	84.06%
Protestants	335590	4.71%
Orthodox	100370	1.41%
Christian total	6425670	90.18%
Jews	89920	1.26%
Muslims	108620	1.52%
Buddhists	41375	0.58%
Hindus	24530	0.34%
Sikhs	8220	0.13%
Other Eastern religions	3425	0.05%
Parareligious groups and other religions	10885	0.15%
No religious affiliation	400325	5.62%
Total non-Christians	687300	9.65%

687,300 persons declare they are not Catholic, Protestant or Orthodox Christians. The number of persons who declare they are not Catholic or Protestant, from all regions of Québec, is constantly increasing.

Appendix II

Summary of the analysis of three possible options, Conseil des relations interculturelles (CRI). (Brief presented to the Minister of Relations with the Citizens and Immigration, March 26, 2004)

Option preferred by the CRI

Re-use the notwithstanding clause	Extend the privilege to all religious denominations	Eliminate denominational religious instruction
<ul style="list-style-type: none"> - Perceived as discriminatory, this option sends a mixed, if not negative, message about other religions, which could be seen as less valid because they are not taught in school. - This solution is hard to justify on the legal front because it weakens the power of the Charter, which should take precedence over all other legislation. - It would uphold a system that does not meet with universal approval. - Even those who benefit consider the clause a transitional measure that enabled them to prepare to assume responsibility for religious instruction. 	<ul style="list-style-type: none"> - Considered hard to apply, even by those who would be extended the privilege of denominational religious instruction for the first time. - Danger that if subjected to the "when numbers warrant" provision, it will be hard to apply, given how far-flung religious groups are. - Raises the question of teacher qualification. - Does not seem consistent with the secularization already underway. - Runs counter to Québec's template for integration by promoting the parallel development of various religious groups within the same establishment entrusted with fostering coherence and harmony. 	<ul style="list-style-type: none"> - Recognizes the pluralism of Québec society while eliminating a discriminatory situation. - Re-instates the rightful role of every instance (school, family, religious organizations) in the religious, moral and social education of young people. - Would enable the diversity within Québec schools to be properly recognized. - Create a more equitable environment more conducive to coherence and harmony. - Would make way for an ethics and religious culture course offered to all students and that would accommodate most religious traditions, while in line with the academic goals of the school system.