File Number: 35496

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE QUÉBEC COURT OF APPEAL)

BETWEEN:

MOUVEMENT LAÏQUE QUÉBÉCOIS AND ALAIN SIMONEAU

Appellants
(Respondents)

– and –

CITY OF SAGUENAY AND JEAN TREMBLAY

Respondents
(Appellants)

– and –

HUMAN RIGHTS TRIBUNAL, EVANGELICAL FELLOWSHIP OF CANADA, CATHOLIC CIVIL RIGHTS LEAGUE, FAITH AND FREEDOM ALLIANCE, ASSOCIATION DES PARENTS CATHOLIQUES DU QUÉBEC, CANADIAN SECULAR ALLIANCE and CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

FACTUM OF THE INTERVENERS CATHOLIC CIVIL RIGHTS LEAGUE, FAITH AND FREEDOM ALLIANCE and ASSOCIATION DES PARENTS CATHOLIQUES DU QUÉBEC

(Rule 42 of the *Rules of the Supreme Court of Canada*)

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Robert W. Staley
Ranjan K. Agarwal
Jack R. Maslen

Telephone: 416-777-4857
Facsimile: 416-863-1716
Email: staleyr@bennettjones.com

Counsel to the Interveners, Catholic Civil rights League, Faith and Freedom Alliance, and Association des parents catholiques du Québec

BENNETT JONES LLP
World Exchange Plaza
1900-45 O'Connor Street
Ottawa, ON K1P 1A4

Sheridan Scott

Telephone: 613-683-2302
Facsimile: 613-683-2323
Email: scotts@bennettjones.com

Agent to the Interveners, Catholic Civil rights League, Faith and Freedom Alliance, and Association des parents catholiques du Québec

ORIGINAL TO: THE REGISTRAR
SUPREME COURT OF CANADA

COPIES TO:

ALARIE LEGAULT
507, Place d'Armes
Bureau 1210
Montréal, QC H2Y 2W8

Luc Alarie

Telephone: 514-527-0371 Ext: 234
Facsimile: 514-527-1561
Email: lucalarie@alarielegault.ca

Counsel to the Appellants, Mouvement laïque québécois and Alain Simoneau

BERGERON, GAUDREAU
167, rue Notre Dame de l'Île
Gatineau, QC J8X 3T3

Richard Gaudreau

Telephone: 819-770-7928
Facsimile: 819-770-1424
Email: bergeron.gaudreau@qc.aira.com

Agent to the Appellants, Mouvement laïque québécois and Alain Simoneau

CAIN LAMARRE CASGRAIN WELLS
Ste. 600, 255 rue Racine E.
P.O. Box 5420, Stn. Racine
Chicoutimi, QC G7H 6J6

Richard Bergeron
Claude-Armand Sheppard

Telephone: 418-545-4580
Facsimile: 418-549-9590
Email: richard.bergeron@clcw.ca

Counsel to the Respondents, City of Saguenay and Jean Tremblay

DEVEAU, BOURGEOIS, GARNÉ, HÉBERT & ASSOCIÉES, SENCRI
867, boulevard Saint-René Ouest, Suite 8
Gatineau, QC J8T 7X6

Frédérick Langlois

Telephone: 819-243-2616
Facsimile: 819-243-2641
Email: flanglois@deveau.qc.ca

Agent to the Respondents, City of Saguenay and Jean Tremblay

LAFORTUNE, CADIEUX, s.e.n.c.r.l.
500, Place d'Armes
Bureau 1400
Montréal, QC H2Y 2W2

Louise Cadieux

Telephone: 514-287-7171
Facsimile: 514-287-7588
Email: lcadieux@lafortunecadieux.com

Counsel to the Intervener, Human Rights Tribunal

SUPREME ADVOCACY LLP
100 - 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major

Telephone: 613-695-8855 Ext: 102
Facsimile: 613-695-8580
Email: mfmajor@supremeadvocacy.ca

Agent to the Intervener, Human Rights Tribunal

VINCENT DAGENAIS GIBSON LLP
260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos

Telephone: 613-241-2701
Facsimile: 613-241-2599
Email: albertos@vdg.ca

Counsel to the Intervener, Evangelical Fellowship of Canada

FARRIS, VAUGHAN, WILLS & MURPHY LLP
Box 10026, Pacific Cre. S. TD Bank Tower
25th Floor – 700 Georgia Street West
Vancouver, BC V7Y 1B3

Tim A. Dickson

Telephone: 604-661-9341
Facsimile: 604-661-9349
Email: tdickson@farris.com

Counsel to the Intervener, Canadian Secular Alliance

GOWLING LAFLEUR HENDERSON LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Telephone: 613-786-8695
Facsimile: 613-788-3509
Email: lynne.watt@gowlings.com

Agent to the Intervener, Canadian Secular Alliance

MCCARTHY TÉTRAULT LLP
2500 – 1000 De La Gauchetiére Street West
Montréal, QC H3B 0A2

J.R. Kristian Brabander

Telephone: 514-397-4273
Facsimile: 514-875-6246
Email: kbrabander@mccarthy.ca

Counsel to the Intervener, Canadian Civil Liberties Association

CONWAY BAXTER WILSON LLP
1111 Prince of Wales, Suite 401
Ottawa, ON K2C 3T2

Colin S. Baxter

Telephone: 613-780-2012
Facsimile: 613-688-0271
Email: cbaxter@conway.pro

Counsel to the Intervener, Canadian Civil Liberties Association

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PART I: OVERVIEW AND STATEMENT OF FACTS

1. This appeal is about whether the respondents acted in a discriminatory manner against the appellant Alain Simoneau, a non-believer, by permitting prayers at city council meetings and religious symbols on city property.

2. But, this appeal is *also* about how to reconcile or balance competing rights under anti-discrimination statutes.

3. The Catholic Civil Rights League, the Faith and Freedom Alliance and the Association des parents catholiques du Québec (the **Interveners**) submit that multi-faith and non-denominational prayers and religious symbols do not discriminate against non-believers.

4. In support of its position, the Interveners make the following submissions:

   (a) Authentic pluralism allows for religion to share space with non-believers in the public sphere. Any exclusion of an inclusive prayer, which is not coercive or a constraint on non-believers, would offend state neutrality because it would amount to a preference for non-belief over belief.

   (b) Given Canada's tradition of authentic pluralism, human rights tribunals, where appropriate, must reconcile competing rights and values to avoid a conflict between them. They must adopt a contextual, proportional, flexible, and coherent approach to the adjudication of competing claims.

   (c) In the present case, to avoid true conflict between the appellants' equality rights and society's interest in promoting meaningful religious pluralism, municipalities may have non-denominational or multi-faith prayers or religious symbols—provided the act of prayer does not compel obedience and is not used to proselytize or advance any one faith, or to disparage any other faith or belief.

5. The Interveners accept the facts as stated in the factum of the respondents.

PART II: STATEMENT OF POSITION

6. The Interveners support the respondents' position that the prayer and religious symbols at issue are not discriminatory under article 10 of the Québec *Charter of human rights and freedoms*

(***Québec Charter***).[1] The Interveners do not take a position on the other questions at issue in this appeal.

PART III: STATEMENT OF ARGUMENT

A. The Freedom of Religion is Grounded in Authentic Pluralism

1. The Challenges to Pluralism

7. A defining characteristic of Canada's national character is its "evolutionary tolerance for diversity and pluralism", which recognizes that "ethnic, religious and cultural differences" will be "acknowledged and respected".[2]

8. However, Canada's many cultures, languages, religions, beliefs, and identities sometimes conflict. These conflicts pose a constant challenge for decision-makers, governments and citizens in delineating the balance between individual rights and the rights of others.

9. Canadians confront these challenges by reconciling their competing rights. This process of reconciliation is a fundamental aspect of our democratic and constitutional tradition, which promotes *authentic pluralism*. Pluralistic liberalism means that disagreement and different beliefs are encouraged, and means employing a "complex, nuanced, fact-specific exercise"[3] of balancing rights that circumscribes them to their proper spheres.[4]

10. In stark contrast, the appellants' position promotes a form of *radical liberalism* that views certain rights as "trump" and rejects compromise.[5] In the appellants' view, some rights—here, the equality rights of non-believers—can and should take precedence over others. Such a radical, monolithic liberalism is foreign to the values and traditions Canada rightly prides itself on.[6] The

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[1] RSQ, c C-12.

[2] *Bruker v Marcovitz*, 2007 SCC 54, [2007] 2 SCR 607 [***Bruker***] ¶1, Respondents' Book of Authorities (**Respondents' Authorities**), Vol 1, Tab 19.

[3] *Ibid*, at ¶2, Respondents' Authorities, Vol 1, Tab 19.

[4] Iain T Benson, "Living Together with Disagreement: Pluralism, the Secular, and the Fair Treatment of Beliefs in Canada Today" (Revised and updated presentation delivered at the Ronning Centre forums at the Faith and Life Chapel, University of Alberta, 17 February 2007, and Christ Church, Calgary, Alberta, 18 February 2007) (Edmonton: McCallum Printing Group Inc, 2010) [**Benson**] at 5, Interveners' Book of Authorities (**Interveners' Authorities**), Tab 1.

[5] *Ibid*, Interveners' Authorities, Tab 1; *Chamberlain v Surrey School District No 36*, 2002 SCC 86, [2002] 4 SCR 710 [***Chamberlain***] ¶137, Respondents' Authorities, Vol II, Tab 22.

[6] *Bruker, supra* note 2, Respondents' Authorities, Vol 1, Tab 19.

appellants' position "would be to distort liberal principles in an illiberal fashion and would provide only a feeble notion of pluralism."[7]

11. In this case, the Québec Court of Appeal rightly acknowledged that meaningful pluralism prevents society from being sanitized or all religious reality and requires "reconciling [individual beliefs] with the cultural reality of the society". [8]

2. Pluralism Allows for Religion in Public Life

12. Religion in Canada prospers within this context and conception of pluralism and liberalism, whereby society values the building of strong communities and not solely the pursuit of maximizing personal autonomy.[9] As Justice LeBel explained in *Lafontaine*:

> As a general rule, the state refrains from acting in matters relating to religion. It is limited to setting up a social and legal framework in which beliefs are respected and members of the various denominations are able to associate freely in order to exercise their freedom of worship, which is a fundamental, collective aspect of freedom of religion, and to organize their churches or communities.[10]

13. This authentic pluralism has two implications for religious freedom in Canada:

(a) *First*, no strict separation between church and state limits interaction between the two.

(b) *Second*, the state's duty of neutrality does not prohibit public manifestations of faith.

(a) Religious Freedom in Canada has Pluralistic Roots

14. The history of religious freedom in Canada is unique.[11]

15. The articles of capitulation in 1759 and 1760 between Britain and New France granted the residents of Québec the right to the "free exercise of the roman religion". Further, in 1867 the *British North America Act* secured religious freedoms for the Catholic and Protestant minorities in their

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[7] *Chamberlain*, *supra* note 5, Respondents' Authorities, Vol II, Tab 22.
[8] *Saguenay (Ville de) c Mouvement laïque québécois*, 2011 QCCA 658 [***Saguenay Appeal Decision***], ¶64-65, 72, Appellants' Authorities, Vol II, Tab 52.
[9] Benson, *supra* note 4 at 3-4, Interveners' Authorities, Tab 1.
[10] *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48 ¶68, Appellants' Book of Authorities (**Appellants' Authorities**), Vol I, Tab 23.
[11] Rt Hon Beverly McLachlin, PC, "Freedom of Religion and the Rule of Law: A Canadian Perspective" in Douglas Farrow, ed, *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion and Public Policy* (Montreal: McGill-Queen's University Press, 2004) 12 at 16-21, Interveners' Authorities, Tab 2.

respective provinces by providing a constitutional guarantee for minority religious schools.[12] Most recently, the *Canadian Charter of Rights and Freedoms* has entrenched Canada's unique religious traditions though its preamble and requirement that substantive rights be interpreted in a manner consistent with Canada's "multicultural heritage", which includes religious cultures.[13]

16. Unlike the requirement for a strict separation between church and state under the United States of America's Establishment Clause,[14] the Constitution of Canada allows—if not encourages—state support of religious institutions.[15] For example, in *Adler v Ontario (AG)*, this Court held that the Province of Ontario could fund religious schools and treat Catholic and Jewish schools differently, because of the constitutional protection given to Catholic schools under the Constitution, and despite that funding may "sit uncomfortably with the concept of equality embodied in the *Charter*".[16]

(b) Limits to State Neutrality

17. At the same time, the state in Canada has a duty to remain neutral. This Court has made clear that "state sponsorship of one religious tradition" can be "discrimination against others".[17] But this duty of neutrality cannot be construed to *deny* religion's place in our pluralistic order and thus permits state-sanctioned religious expression.

18. *First*, without coercion or constraint, the freedom of religion cannot be used to force others to do something that a claimant finds displeasing. At its core, the freedom of religion is a bulwark against coercion or constraint by the majority.[18] The duty of state neutrality operates as a corollary to this guarantee of freedom of religion, meaning state neutrality protects the religious freedom of the minority from a tyranny of the majority. In the absence of coercion or constraint, freedom of religion, state neutrality or principles of secularism cannot be invoked.[19]

19. *Second*, "absolute state neutrality"[20] rests on the false premise that the absence of religion is somehow neutral. It is not. From the perspective of a person of faith, the exclusion of religion from

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[12] *Constitution Act*, 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, s 93.
[13] Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act* (1982) (UK), 1982, c 11, s 27; *Bruker*, *supra* note 2, Respondents' Authorities, Vol 1, Tab 19.
[14] Peter W Hogg, *Constitutional Law of Canada*, loose-leaf (consulted on 25 August 2014), 5th ed (Toronto: Carswell, 2007), ch 42 [**Hogg**] at ¶42.2, Interveners' Authorities, Tab 3.
[15] *Ibid*, ¶42.8, Interveners' Authorities, Tab 3; Bruce Ryder, "State Neutrality and Freedom of Conscience and Religion" (2005) 29 SCLR (2d) at 178, Interveners' Authorities, Tab 4.
[16] *Adler v Ontario*, [1996] 3 SCR 609 ¶36-39, 46-48, Interveners' Authorities, Tab 5.
[17] *SL v Commission scolaire des Chênes*, 2012 SCC 7 [***SL***] ¶17, Respondents' Authorities, Vol III, Tab 56.
[18] *R v Big M Drug Mart*, [1985] 1 SCR 295 at 336, Appellants' Authorities, Vol II, Tab 45.
[19] *SL*, *supra* note 15 ¶18-21, Respondents' Authorities, Vol III, Tab 56.
[20] *Saguenay Appeal Decision*, *supra* note 8 ¶68, Appellants' Authorities, Vol II, Tab 52.

the public sphere is an approbation of a competing ideology—atheism or agnosticism.[21] It gives preferential treatment to the beliefs and convictions of atheists and agnostics over those of faith.[22] Indeed, the word "secular" has its roots in suppressing religion in the public sphere and the promotion of anti-religion.[23] . The Québec Court of Appeal in this case correctly rejected absolute state neutrality and instead adopted a more principled "benevolent neutrality".[24]

B. Human Rights Tribunals Must Reconcile Competing Rights

20. In this context, human rights tribunals must act cautiously and take into account the implications of religious pluralism in deciding claims of discrimination and beyond. This is especially true as Canada becomes increasingly ethnically and religiously diverse,[25] and its appreciation of multiculturalism "grows".[26] The reconciliation of rights best advances the goals of a truly pluralistic Canadian society.

1. Pluralism Requires Human Rights Tribunals to Reconcile Competing Rights

21. Authentic pluralism does not presume that one right will necessarily trump another.[27] Indeed, this Court has repeatedly rejected the attempt to give certain rights a "superior status".[28] Instead, courts and tribunals should focus on how the space between competing rights and groups can be shared rather than granting dominance to one viewpoint over another.

22. Implicit in this Court's decisions on competing rights is the fact that allowing one right to trump another "is not good for politics or democracy".[29] Human rights claims often focus on the disadvantage to one group (in this case, non-believers) and not on the benefit to society as a whole. These types of claims mobilize around a particular point of view, precluding an opportunity to build coalitions to pursue the general good.[30]

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[21] Richard Moon, "Liberty, Neutrality, and Inclusion: Religious Freedom under the Canadian Charter of Rights and Freedoms" (2002-2003) 41 Brandeis LJ 563 at 571, Interveners' Authorities, Tab 6.
[22] Benson, *supra* note 4 at 6, Interveners' Authorities, Tab 1.
[23] *Ibid* at 10, Interveners Authorities, Tab 1.
[24] *Saguenay Appeal Decision*, *supra* note 8 ¶76, Appellants' Authorities, Vol II, Tab 52.
[25] Heather M MacNaughton and Jessica Connell, "A Delicate Balance: The Challenges Faced by Our Democratic Institutions in Reconciling the Competing Rights and Interests of a Diverse Population" (2011) 44 UBC L Rev 149 at 150, Interveners' Authorities, Tab 7.
[26] *Bruker*, *supra* note 2, Respondents' Authorities, Vol I, Tab 19.
[27] Benson, *supra* note 4 at 5, Interveners' Authorities, Tab 1.
[28] *Gosselin (Tutor of) v Quebec (AG)*, 2005 SCC 15 ¶26, Interveners' Authorities, Tab 8; see also *WIC Radio Ltd v Simpson*, 2008 SCC 40 ¶2, Interveners' Authorities, Tab 9.
[29] Benson, *supra* note 4 at 30-31, citing Charles Taylor, "The Public Sphere", in his *Philosophical Arguments* (Cambridge, MA: Harvard University Press, 1995) 257 at 281, Interveners' Authorities, Tab 1.
[30] *Ibid*, at 31, Interveners' Authorities, Tab 1.

23. In reconciling human rights, this Court has relied on four overarching principles:

(a) ***Context:*** Rights should be viewed in their context and their limits defined within such boundaries.

(b) ***Proportionality:*** Limits on rights must weigh the deleterious and salutary aspects of the effects and the measures.

(c) ***Coherence:*** Courts should avoid a conflict between seemingly clashing rights by properly determining the scope of rights.

(d) ***Flexibility:*** The analysis must be flexible and capable of addressing broader social purposes beyond *Charter* or legislated rights.[31]

24. The objective of the analysis, which is derived from Canada's evolutionary tolerance for diversity and pluralism, is to find a way to give "full force and effect" to each right within the relevant context.[32]

2. A Framework for Human Rights Tribunals to Reconcile Rights

25. Building on the decisions in the press freedom cases,[33] this Court, in *R v NS*, established a framework for analyzing competing rights questions. The framework in that case focused on the claimant's religious belief and the respondents' fair trial rights. Using those facts, this Court described the framework as follows:

(a) Would requiring the witness to remove the *niqab* while testifying interfere with her religious freedom?

(b) Would permitting the witness to wear the *niqab* while testifying create a serious risk to trial fairness?

(c) Is there a way to accommodate both rights and avoid the conflict between them?

(d) If no accommodation is possible, do the salutary effects of requiring the witness to remove the *niqab* outweigh the deleterious effects of doing so?[34]

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[31] Hon Frank Iacobucci, "Reconciling Rights: The Supreme Court of Canada's Approach to Competing Charter Rights" (2003) SCLR (2d) 137 at 155-161, Interveners' Authorities, Tab 10.

[32] *R v NS*, 2010 ONCA 670 ¶47, Interveners' Authorities, Tab 11; aff'd by 2012 SCC 72 [***NS SCC***], Appellants' Authorities, Vol II, Tab 48.

[33] *Dagenais v Canadian Broadcasting Corp*, [1994] 3 SCR 835 at 878, Interveners' Authorities, Tab 12; *R v Mentuck*, 2001 SCC 76 ¶32-36, Interveners' Authorities, Tab 13.

[34] *NS SCC, supra* note 29 ¶9, Appellants' Authorities, Vol II, Tab 48.

26. But the analysis in *NS* is focused on competing rights under the *Charter*. There is no appellate guidance in Canada as to how statutory tribunals or courts should reconcile competing equality rights under human rights and anti-discrimination legislation, a significant gap.

27. For its part, the Ontario Human Rights Commission has adopted a *Policy on Competing Human Rights*,[35] which mirrors the analytical framework established in *NS*:

(a) **Recognizing competing rights claims:** What are the claims about? Do claims connect to legitimate rights? Do claims amount to more than minimal interference with rights?

(b) **Reconciling competing rights claims:** Is there a solution that allows enjoyment of each right? If not, is there a "next best" solution?

28. The essential element of both approaches is to, again, identify the competing rights and then attempt to reconcile them so as to give them both "full force and effect".

29. These frameworks should only apply to competing rights questions *properly* considered by statutory tribunals or courts. Indeed, this Court has affirmed that decisions of democratic institutions, and particularly municipalities, must be accorded high deference by courts and tribunals. Such institutions are primarily accountable to the electorate and courts have refused to overturn municipal bylaws unless they were found to be "aberrant", "overwhelming", or if "no reasonable body" could have adopted them.[36] Similarly, the Supreme Court of the United States has recognized that municipalities, acting in good faith to emulate a congressional prayer practice, should not be held to standards of "exactitude".[37] In this context, the proposed reconciliation framework should be employed by human rights tribunals, but only to those rights questions, practices or decisions of municipalities that reach the threshold for review.

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[35] Ontario Human Rights Commission, "Policy on Competing Rights", online: <http://www.ohrc.on.ca/en/ policy-competing-human-rights>, Interveners' Authorities, Tab 14.
[36] *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2, [2012] 1 SCR 5 ¶20, Interveners' Authorities, Tab 15.
[37] *Greece (Town of) v Galloway*, 134 S Ct 1811 (2014), at 25-26 (Alito), Respondents' Authorities, Vol IV, Tab 59.

3. Application of the Framework to this Case

30. In this case, the framework established in *NS* can be applied to the equality and discrimination claims under the *Québec Charter* as follows:

(a) Does the presence of the Sacred Heart statute or crucifix in the City's council chambers or the recitation of a prayer before City council meetings infringe the appellants' equality rights?

(b) Would ordering the removal of the Sacred Heart statute or crucifix from the City's council chambers or the cessation of the recitation of the prayer before City council meetings infringe the respondents' equality rights?

(c) Is there a way to accommodate both rights and avoid the conflict between them?

(d) If no accommodation is possible, do the salutary effects of allowing the presence of the Sacred Heart statute or crucifix in the City's council chambers or the recitation of a prayer before City council meetings outweigh the deleterious effects of doing so?

31. A reasonable accommodation of both rights in this case is to allow non-denominational or multi-faith prayers or religious symbols, provided that the act of prayer or the religious symbols are not used to proselytize or advance any one faith, or to disparage any other, faith or belief.

32. This accommodation is consistent with how courts have reconciled these very same competing rights in other cases:

- *Freitag v Penetanguishene (Town)*:[38] The Court of Appeal for Ontario held that the recitation of the Lord's Prayer at Town Council meetings was unconstitutional because the purpose of the prayer was to "impose a specifically Christian moral tone" on Town meetings and the claimant felt intimidated and was the subject of scrutiny. The Court remarked a moment of silence or non-denominational prayer would not have had the same proscribed effect.[39]

- *Allen v Renfrew (Corporation of the County)*:[40] The Ontario Superior Court of Justice held that the County's prayer was non-sectarian and its purpose was to "impose a moral tone on the proceedings and to promote certain values, in particular good

[38] (1999), 47 OR (3d) 301 (CA), Respondents' Authorities, Vol II, Tab 36.
[39] *Ibid*, ¶24-25, 52, Respondents' Authorities, Vol II, Tab 36.
[40] (2004), 69 OR (3d) 742 (Sup Ct), Appellants' Authorities, Vol I, Tab 11.

> governance".[41] In that case, the prayer was not "coercive or otherwise and [did not] impose any burden on the applicant".[42]

33. The appellants' position appears to be that *any* prayer, even if it is non-denominational, violates their equality rights. This same view was adopted in *Freitag v Penetanguishene (Town),*[43] where the claimant challenged the Town's revised non-denominational Town Prayer. The Human Rights Tribunal of Ontario found that the Town Prayer, though otherwise secular, was derived "at least in part from Judeo-Christian values and beliefs" and therefore discriminatory.[44] The Tribunal rejected any attempt to reconcile or balance the parties' competing rights.[45]

34. The appellants' views in this case (like the Tribunal's decision in *Freitag*) implicitly favour convergence liberalism, where there can be *no* faith or religion or faith in public spaces. This view advocates public "sanitization". It ignores the equality rights of religious groups and individuals or suggest that the rights of non-believers "trump" those of believers.

35. The more ***coherent*** approach is to try to reconcile the two competing views: can the appellants' right not to be compelled to observe a religion be ***flexibly*** accommodated in a ***proportional*** manner while, at the same time, recognizing the historical and religious ***context*** of the respondents' position (including the enactment of the Bylaw at issue and the placing of the Sacred Heart statute and the crucifix)?

36. A reconciliation of the competing rights in this case can lead to an outcome where both believers and non-believers can co-exist without either one's rights trumping the other's.

C. Conclusion

37. The freedom of religion and the right to equal treatment without discrimination, on the basis of religion, does not and cannot go so far as to require non-believers to obey a religious practice.

38. At the same time, the unique form of Canadian pluralism and liberalism does not mean that there is no religion or faith in our public spaces. The preamble to the *Charter*, the coat of arms of Canada and our national anthem all pay homage to our religious history. Though our religious

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[41] *Ibid,* ¶18, Appellants' Authorities, Vol I, Tab 11.
[42] *Ibid,* ¶24, 27, Appellants' Authorities, Vol I, Tab 11.
[43] 2013 HRTO 893, Appellants' Authorities, Vol II, Tab 28.
[44] *Ibid*, ¶46, Appellants' Authorities, Vol II, Tab 28; see also *Québec (Commission des droits de la personne et des droits de la jeunesse) v Laval (Ville),* 2006 QCTDP 17, Appellants' Authorities, Vol I, Tab 19.
[45] *Ibid*, ¶52, Appellants' Authorities, Vol II, Tab 28.

freedoms rightly ensure that there is no "tyranny of the majority", they cannot be used to give non-believers a monopoly on our public spaces.

39. The doctrinally consistent approach is to try to reconcile these competing rights by giving full force and effect to both. That means that if a municipality wants to invoke a non-denominational or multi-faith prayer at meetings to "promote certain values", or if there are culturally-significant symbols derived from religion in public spaces, those acts are not necessarily in breach of non-believers' equality rights unless someone is compelled to observe a religious practice.

40. Our country's history has shown that prayer in a limited context can co-exist with the principles of religious freedom. To end that practice now is to undermine our "evolutionary tolerance for diversity and pluralism".[46]

PART IV: SUBMISSIONS CONCERNING COSTS

41. The Interveners do not seek their costs of this appeal. The Interveners should not be ordered to pay the whole or any part of the costs of this appeal.

PART V: ORDER REQUESTED

42. The Interveners respectfully request permission to present oral argument at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th DAY OF AUGUST 2014.

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BENNETTT JONES LLP

[46] *Bruker, supra* note 2, Respondents' Authorities, Vol I, Tab 19.

PART VI: TABLE OF AUTHORITIES

JURISPRUDENCE	**CITED AT:**
Adler v Ontario, [1996] 3 SCR 609	¶
Allen v Renfrew (Corporation of the County), (2004), 69 OR (3d) 742 (Sup Ct), 117 CRR (2d) 280	
Bruker v Marcovitz, 2007 SCC 54, [2007] 2 SCR 607	
Catalyst Paper Corp v North Cowichan (District), 2012 SCC 2, [2012] 1 SCR 5	
Chamberlain v Surrey School District No 36, 2002 SCC 86, [2002] 4 SCR 710	
Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village), 2004 SCC 48, [2004] 2 SCR 650	
Dagenais v Canadian Broadcasting Corp, [1994] 3 SCR 835	
Freitag v Penetanguishene (Town) 2013 HRTO 893	
Freitag v Penetanguishene (Town) (1999), 47 OR (3d) 301 (CA), 179 DLR (4th) 67 CRR	
Greece (Town of) v Galloway, 134 S Ct 1811 (2014)	
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R v Big M Drug Mart, [1985] 1 SCR 295	
R v Mentuck, 2001 SCC 76, [2001] 3 SCR 442	
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PART VII: CONSTITUTION, STATUTES AND INSTRUMENTS

***Constitution Act,* 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5**	***Loi constitutionelle de 1867 (R-U),* 30 & 31 Vict, c 3, reproduite dans LRC 1985, annexe II, n^{o} 5**
Education 93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions: (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union: (2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Québec: (3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education: (4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the	Éducation 93. Dans chaque province, la législature pourra exclusivement décréter des lois relatives à l'éducation, sujettes et conformes aux dispositions suivantes: (1) Rien dans ces lois ne devra préjudicier à aucun droit ou privilège conféré, lors de l'union, par la loi à aucune classe particulière de personnes dans la province, relativement aux écoles séparées (denominational); (2) Tous les pouvoirs, privilèges et devoirs conférés et imposés par la loi dans le Haut-Canada, lors de l'union, aux écoles séparées et aux syndics d'écoles des sujets catholiques romains de Sa Majesté, seront et sont par la présente étendus aux écoles dissidentes des sujets protestants et catholiques romains de la Reine dans la province de Québec; (3) Dans toute province où un système d'écoles séparées ou dissidentes existera par la loi, lors de l'union, ou sera subséquemment établi par la législature de la province — il pourra être interjeté appel au gouverneur-général en conseil de toute loi ou décision d'aucune autorité provinciale affectant aucun des droits ou privilèges de la minorité protestante ou catholique romaine des sujets de Sa Majesté relativement à l'éducation; (4) Dans le cas où il ne serait pas décrété telle loi provinciale que, de temps à autre, le gouverneur-général en conseil jugera nécessaire pour donner suite et exécution aux dispositions du présent article, — ou dans le cas où quelque décision du gouverneur-général en conseil, sur appel interjeté en vertu du présent article, ne serait pas mise à exécution par l'autorité provinciale compétente — alors et en tout tel cas, et en tant seulement que les circonstances de chaque cas l'exigeront, le parlement du Canada pourra décréter des lois

***Constitution Act,* 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5**	***Loi constitutionelle de 1867 (R-U),* 30 & 31 Vict, c 3, reproduite dans LRC 1985, annexe II, n^{o} 5**
Provisions of this Section and of any Decision of the Governor General in Council under this Section.	propres à y remédier pour donner suite et exécution aux dispositions du présent article, ainsi qu'à toute décision rendue par le gouverneur-général en conseil sous l'autorité de ce même article.

***Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.**	***Charte canadienne des droits et libertés*, partie I de la *Loi constitutionelle de 1982*, constituent l'annexe B de la *Loi de 1982 sur le Canada* (R-U), 1982 c 11.**
Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law: […] Fundamental Freedoms 2. Everyone has the following fundamental freedoms: (*a*) freedom of conscience and religion; [...] Multicultural heritage 27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.	Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit : […] Libertés fondamentales 2. Chacun a les libertés fondamentales suivantes : *a*) liberté de conscience et de religion; […] Maintien du patrimoine culturel 27. Toute interprétation de la présente charte doit concorder avec l'objectif de promouvoir le maintien et la valorisation du patrimoine multiculturel des Canadiens.

***Québec charter of human rights and freedoms,* RSQ, c C-12**	***Chartes des droits et libertés de la personne,* RSQ, c C-12**
Right to Equal Recognition and Exercise of Rights and Freedoms 10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.	Droit à légalité dans la reconnaissance et l'exercise des droits et libertés 10. Toute personne a droit à la reconnaissance et à l'exercice, en pleine égalité, des droits et libertés de la personne, sans distinction, exclusion ou préférence fondée sur la race, la couleur, le sexe, la grossesse, l'orientation sexuelle, l'état civil, l'âge sauf dans la mesure prévue par la loi, la religion, les convictions politiques, la langue, l'origine ethnique ou nationale, la condition sociale, le handicap ou l'utilisation d'un moyen pour pallier ce handicap.

File Number: 35496

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE QUÉBEC COURT OF APPEAL)

BETWEEN:

MOUVEMENT LAÏQUE QUÉBÉCOIS and ALAIN SIMONEAU

Appellants
(Respondents)

– and –

CITY OF SAGUENAY and JEAN TREMBLAY

Respondents
(Appellants)

– and –

HUMAN RIGHTS TRIBUNAL, EVANGELICAL FELLOWSHIP OF CANADA, CATHOLIC CIVIL RIGHTS LEAGUE, FAITH AND FREEDOM ALLIANCE, ASSOCIATION DES PARENTS CATHOLIQUES DU QUÉBEC, CANADIAN SECULAR ALLIANCE and CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

FACTUM OF THE INTERVENERS THE CATHOLIC CIVIL RIGHTS LEAGUE, FAITH AND FREEDOM ALLIANCE and ASSOCIATION DES PARENTS CATHOLIQUES DU QUÉBEC

(Rules 42 of the *Rules of the Supreme Court of Canada*)

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Robert W. Staley
Ranjan K. Agarwal
Jack R. Maslen
Telephone: 416-777-4857
Facsimile: 416-863-1716
Email: staleyr@bennettjones.com

Counsel to the Interveners, the Catholic Civil Rights League, the Faith and Freedom Alliance, and Association des Parents Catholiques du Québec

BENNETT JONES LLP
World Exchange Plaza
1900-45 O'Connor Street
Ottawa, ON K1P 1A4

Sheridan Scott
Telephone: 613-683-2302
Facsimile: 613-683-2323
Email: scotts@bennettjones.com

Counsel to the Interveners, the Catholic Civil Rights League, the Faith and Freedom Alliance, and Association des Parents Catholiques du Québec