

# The State Must Be Neutral: The Saguenay Case

*This article was written by a law student for the general public.*

## Introduction

The separation between church and state is an important issue for every democracy. To what extent can democratic institutions engage in some form of religious observance, if at all? On April 15, 2015, the Supreme Court of Canada decided whether reciting a prayer at municipal council meetings is constitutional in the case of *Mouvement laïque québécois v Saguenay (Saguenay)*.<sup>[1]</sup> The Supreme Court concluded that reciting religious prayers at municipal council meetings is unconstitutional, because it violates the right to freedom of conscience and religion in sections 3 and 10 of the *Quebec Charter of Human Rights and Freedoms (Quebec Charter)*.<sup>[2]</sup>

Section 3 of the *Quebec Charter* states: “Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.” Section 10 supplements section 3 by prohibiting discrimination on a number of grounds, including religion.

An important theme in *Saguenay* was the Supreme Court’s analysis on the state’s duty of neutrality. The Supreme Court ruled that the duty of neutrality requires the state to abstain from favouring one religious view over another.<sup>[3]</sup> In this case, the Saguenay municipal council breached its duty of neutrality because the mayor was reciting a religious prayer at the beginning of meetings that favoured one faith over another.

## Facts

The City of Saguenay is located in the province of Quebec. At the start of every public municipal council meeting, the mayor of Saguenay, Mr. Tremblay, recited a prayer. The prayer began and ended with the sign of the cross, while the mayor would say “in the name of the Father, the Son and the Holy Spirit”.<sup>[4]</sup> The prayer included reference to an eternal and almighty God, and of being in His presence.

Mr. Simoneau regularly attended the municipal meetings. As a self-identifying atheist, the prayer made Mr. Simoneau feel isolated and excluded because of his religious views. Mr. Simoneau asked the mayor to stop the practice, but the mayor refused. In response, an organization called Mouvement laïque québécois (MLQ) filed a complaint to the Human Rights Tribunal on Mr. Simoneau’s behalf.

Four months after the MLQ’s complaint, the City adopted a Bylaw that regulated the recitation of the prayer. The bylaw changed the wording of the prayer and created a two-

minute gap between the end of the prayer and the official opening of council meetings. The two-minute gap was supposed to create a buffer between the prayer and the council meeting. Individuals who did not want to participate in the prayer could enter the council after the prayer was over during those two minutes. The new prayer modified some words, but still contained reference to “Almighty God”, and asked for His blessing.<sup>[5]</sup> Mr. Simoneau and the MLQ revised their complaint to the Tribunal and asked it to declare the Bylaw inoperative.

## **Procedural History**

The Human Rights Tribunal heard Mr. Simoneau’s case in 2011. The Tribunal decided that the Bylaw and the prayer interfered with Mr. Simoneau’s right to freedom of conscience and religion.<sup>[6]</sup> This interference was found to be more than trivial. The Tribunal found that the purpose of the Bylaw was invalid because it had a religious purpose that showed preference for one religion at the expense of others.<sup>[7]</sup> The religious nature of the prayer made it incompatible with the state’s duty of neutrality. Therefore, the interference with Mr. Simoneau’s freedom of conscience and religion was discriminatory.

The City of Saguenay appealed the Tribunal’s decision to the Quebec Court of Appeal. In May 2013, the Court of Appeal reversed the Tribunal’s decision. It found that the prayer did not discriminate against Mr. Simoneau on the ground of freedom of conscience and religion. Justice Associate Gagnon found that the prayer was not associated with any particular religion, and expressed universal values.<sup>[8]</sup>

On the issue of neutrality, the Court of Appeal endorsed the concept of “benevolent neutrality”. Justice Associate Gagnon held that benevolent neutrality means a government cannot encourage or discourage any belief or non-belief.<sup>[9]</sup> However, a government is not required to abstain from being involved in religious matters. The duty of neutrality must be consistent with respect for a society’s heritage and traditions.<sup>[10]</sup>

Mr. Simoneau and the MLQ appealed to the Supreme Court of Canada.

## **Issues**

The main issue before the Supreme Court was whether the City of Saguenay violated Mr. Simoneau’s right to freedom of conscience and religion, contrary to sections 3 and 10 of the *Quebec Charter*. The scope of the state’s duty of neutrality was a key component to answering this question.

## **Decision in Brief**

The Supreme Court unanimously agreed with Mr. Simoneau and the MLQ. It found that the prayer and the Bylaw breached the state’s duty of neutrality, because it favoured one religion to the detriment of others. This breach of neutrality resulted in discriminatory interference with Mr. Simoneau’s religious beliefs. Therefore, the Supreme Court decided that the prayer and the Bylaw violated Mr. Simoneau’s right to freedom of conscience and religion.

## **Analysis**

### ***Quebec Charter of Human Freedoms and the Canadian Charter of Rights and Freedoms***

Justice Gascon delivered the Supreme Court's reasons. As a preliminary matter, the Supreme Court held that section 3 of the *Quebec Charter* and section 2(b) of the *Canadian Charter of Rights and Freedoms* (*Canadian Charter*) are interpreted according to the same principles.<sup>[11]</sup> Section 2(b) of the *Canadian Charter* states: "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion". Therefore, the Supreme Court's interpretation of freedom of conscience and religion in this case also applies to section 2(b) of the *Canadian Charter*.

#### **The Duty of Neutrality**

The Supreme Court began its discussion of state neutrality by defining what freedom of conscience and religion protects. Freedom of conscience and religion protects the right to hold and express beliefs. <sup>[12]</sup> It also protects the right to be free from being compelled to adhere to religious observance, or to act contrary to one's beliefs.<sup>[13]</sup> These protections apply equally to religious belief, as well as to non-belief.<sup>[14]</sup> The Supreme Court recognized that freedom of conscience and religion does not explicitly impose a duty of neutrality.

The duty of neutrality comes from an evolving interpretation of freedom of conscience and religion.<sup>[15]</sup> This duty requires the state to be neutral about religion and religious beliefs, meaning that the state cannot show favour or disfavour for any particular belief or non-belief.<sup>[16]</sup> Additionally, the state cannot encourage or discourage any form of religious conviction or observance. The duty of neutrality helps to create a neutral public space that is free of discrimination. It also promotes Canada's multicultural heritage, and is consistent with the ideal of a free and democratic society.<sup>[17]</sup>

#### **Breaching the Duty of Neutrality and Interfering with Freedom of Conscience and Religion**

Justice Gascon set out two requirements for assessing whether a state has breached its duty of neutrality: first, the state must take action that professes, adopts, or favours one belief to the exclusion of others.<sup>[18]</sup> Second, the exclusionary action must have the effect of interfering with a person's freedom of conscience and religion.<sup>[19]</sup> More specifically, the practice must prevent an individual from acting according to his or her beliefs. The interference must be more than trivial or insignificant.

Not every breach of neutrality results in discriminatory interference. The Supreme Court recognized that Canada has a diverse cultural landscape that includes unique heritage and traditional practices that are religious in nature. So long as the state does not consciously adopt, favour, or profess a faith to the detriment of others, it does not have to abstain from preserving its cultural heritage.<sup>[20]</sup>

In addition, Section 9.1 of the *Quebec Charter* allows the government to provide a

justification for a law that violates a person's right to freedom of conscience and religion. If the court finds that the law maintains "proper regard for democratic values, public order and the general well-being" of citizens, then it is valid.[21]

### **Application to the Facts of this Case**

The Supreme Court found that the City of Saguenay breached its duty of neutrality. Reciting the prayer at municipal council meetings meant the City of Saguenay was adopting, professing, or favouring one religion to the exclusion of others.[22] The Supreme Court found that the wording of the original and modified prayers was religious in nature.

The Supreme Court also found that the Bylaw and prayer interfered with Mr. Simoneau's freedom of conscience and religion in a discriminatory manner. By reciting the prayer, the City created a preferential space for people with theistic beliefs.[23] Participation in the prayer for non-believers came at the expense of being isolated, excluded, and stigmatized for their non-belief. Mr. Simoneau was forced to choose between conforming to the City's religious practice, or excluding himself at the risk of revealing his religious views.[24]

In conclusion, the Supreme Court held that the prayer and the Bylaw violated Mr. Simoneau's freedom of conscience and religion. The City of Saguenay was unable to provide a valid justification for this violation.

### **Significance of the Ruling**

The *Saguenay* decision will likely require every municipal council across Canada to end the practice of reciting prayers at council meetings. A problem may arise in circumstances where every individual in a city council belongs to the same religion. For the state to breach the duty of neutrality, it must take some action that professes, adopts, or favours one belief to the exclusion of others. The exclusion must interfere with someone's ability to act in accordance with his or her beliefs. However, if every person at a municipal council meeting acquiesces to the prayer, will a city be obliged to end that practice?

Another issue relates to the distinction between religious expression, and traditional and heritage practices. The Supreme Court explained that its decision does not prevent the state from engaging in heritage and traditional practices that are religious in nature. Immediately one can ask, who will determine whether certain practices are part of Canada's heritage and tradition? Perhaps the courts will have to make those decisions. In light of these issues, *Saguenay* will likely come up in future cases dealing with state practices that involve religion.

For more information about this, see [this article](#) by [The Court](#).

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[1] *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16, 382 DLR (4th) 385 .

[2] *Charter of human rights and freedoms*, RSQ c C-12 .

[3] *Saguenay*, supranote 1 at para 134.

[4] *Ibid* at para 6.

[5] *Ibid* at para 12.

[6] *Ibid* at para 15.

[7] *Ibid*.

[8] *Ibid* at para 21.

[9] *Ibid* at para 20.

[10] *Ibid*.

[11] *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 .

[12] *Saguenay*, supranote 1 at para 68.

[13] *Ibid*.

[14] *Ibid* at para 69.

[15] *Ibid* at para 71.

[16] *Ibid*.

[17] *Ibid* at paras 74 & 75.

[18] *Ibid* at para 84.

[19] *Ibid* at para 85.

[20] *Ibid* at para 116

[21] *Quebec Charter*, supranote 2 at 9.1.

[22] *Saguenay*, supranote 1 at para 113.

[23] *Ibid* at para 120.

[24] *Ibid* at para 121.