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Le conseil catholique d'expression anglaise

The English Speaking Catholic Council (514) 937-2301

Tuesday, November 8, 2011

Ms. Yolande James
Minister of Families
Government of Quebec
425 Saint-Amable Street,
4th Floor
Quebec, Quebec G1R 4Z1

Dear Minister,

We are in receipt of your letter dated September 7, 2011 regarding the directive undertaken by your office on the matter of religious education in early childhood education facilities and daycares. We want to begin by lauding the goals of Article 5 of the *Loi sur les services de garde éducatifs à l'enfance*, which you quote verbatim in your letter, viz. the global development and social integration of children in Québec. We wholeheartedly support the integration of children into Québec society, in the spirit of the openness to diversity and inclusiveness that your government has upheld.

We certainly acknowledge your right as Minister to issue Directives and related administrative guidelines in accordance with the scope allowed for by law. Upon perusing the legislation however, we see that it makes no specific mention or provision with respect to religion or even diversity itself. Beginning with the lack of any mention of religion in Article 5, we are at a loss to understand how this legislation deals with the matter of religion. None of the articles in the legislation appears to deal with religion at all.

We have three outstanding questions that concern us at the present time with regard to the directive:

- Firstly, we would like to know how it is possible in principle for one aspect of the global development of a child (her/his religious education) to be censured in order to promote the child's overall development, particularly since the directive to censure religious education in religious daycares is not founded in any law and, *prima facie*, represents a clear violation of Charter guarantees and court decisions respecting freedom of religion. This strikes us as contradictory.
- Secondly, it is not clear to us how it is possible that measures which eliminate the opportunities for religious education should promote the goal of having children respect diversity, religious or otherwise.

- Thirdly, with respect to the directive issued by your office in relation to the legislation, administratively speaking, we would like to understand how you, as Minister, have decided to apply the legislation with particular focus on religious education. What criteria have you adopted in taking this decision as Minister, as there is no mention nor prohibition of religion in the law? And, what is the rationale of the directive that you have taken, since such rationales, as they might pertain to religion, are not contained in the law? This is a very serious matter as you will recall from Judge Gérard Dugré's decision in *Loyola High School and John Zucchi v. Michelle Courchesne*, in her capacity as Minister of Education, Recreation and Sports. Judge Dugré found that the Minister exceeded her jurisdiction by deciding *a priori* that a religiously based school could not deliver a program equivalent to the Ministry's prescribed program. In effect, you have done the same. You have unilaterally decided *a priori* that a religiously based daycare is unable to deliver a program that opens the children to diversity and inclusiveness. Not only does your decision show a lack of inclusiveness and openness to diversity, with all due respect, you also have exceeded your jurisdiction.

In our discussions, further matters have arisen in regards to this law, and we would like to share with you some of our reflections on them. There is the general issue of whether it is wise or prudent in cases like this that the public sphere, guided by the apparatus of the state, should impinge on the private sphere. We note from the second paragraph of your letter that the law is not intended to restrain the free choice of parents in inculcating in their children the religion of their choice. And yet, by forbidding private (subsidized) daycares the option of including religious education within their programmes, the state has moved directly into the private sphere. Daycares, as you well know, are fundamentally unlike publicly funded and operated schools.

In this respect, we would like to note that the law seems to contradict the United Nations Declaration of Human Rights, specifically in Article 26 where it is stated: "Parents have a prior right to choose the kind of education that shall be given to their children." In light of this principle, the International Covenant on Civil and Political Rights, which Canada ratified in 1976, stipulates the legitimate scope with which the state may act. Article 18.3 of that 1966 covenant, states: "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to *protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*" (our emphasis)

Underlining this freedom is the 'Toledo Agreement', agreed to by the Organization for the Security and Cooperation of Europe (OSCE), which elaborates on the vital importance of freedom of religion and freedom of expression. In line with the OSCE's conflict prevention role and its commitment to fostering a culture of mutual respect and understanding, the Advisory Council of the Office for Democratic Institutions and Human Rights (ODIHR), Panel of Experts on Freedom of Religion or Belief, together with other experts and scholars, met in Toledo, Spain, in March 2007 to discuss approaches to teaching about religions and beliefs in public schools in the fifty-six state OSCE region (which includes Canada, as a signatory). Conclusion 6 of those principles reads: "Reasonable adaptations of policies in response to distinctive religious needs may be required to avoid violation of rights to freedom of religion or belief. Even when not strictly required as a matter of law, such adaptations and flexibility contribute to the building of a climate of tolerance and mutual respect."

