HUMAN RIGHTS, SEXUALITY AND RELIGION: BETWEEN POLICY AND IDENTITY

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ABSTRACT

As important policy changes are discussed and opened to public response, the urgency to reflect more critically about the narrow and essentialized identity constructions within policy is evidenced. While there will continue to be conflict in the public arena regarding religion and sexuality, from those who identify solely with one aspect and condemn or criticize the other, our policies should be reflective and inclusive of more than these narrow assumptions; if our policies and the application of policies can become more adaptive in response to these challenges, perhaps the assumed inherent conflict can be managed with more productive, alternative strategies.

This paper examines implications and consequences when religion and sexuality are assumed to be inherently in conflict, an argument which centres on discourses that essentialize both religious and sexual identities. Discussing two specific examples I explore the framing of religion and particular sexual identities (i.e. LGBTQ); frameworks which are then used to regulate and manage identity based on assumed inherent traits. I conclude with some reflections, suggestions and recommendations regarding inclusivity in policy and law, and further where I think we need to bridge between policy and application.

Increasingly media coverage in Canada, and beyond, has been focused on the subject of the reasonable accommodation of religious minority groups, highlighting numerous controversies regarding the role of religion and religious practices in Canada, often counter positioned to assumed 'secular' principles of Canadian society. When the controversies relate to gender and sexuality, often the strongest religious voices heard in the public arena are voices arguing that sexuality equality rights challenge religious beliefs. Additionally, certain frameworks of 'religion' are regularly framed as inherently oppressive, often toward women and children. Increasingly it is clear that not all religious groups are unified in their approach on the topic of equality rights based on gender, sexuality or sexual orientation. So too are voices of those who are both religious and sexually 'other' or religious and in support of sexual diversity becoming more loudly heard, though often the assumption is that to be religious is to stand on one side of this particular dichotomy.

There is widespread evidence that the relationship between religion and sexuality is not inherently in conflict, but often is constructed as such in public discourse/media, further reinforced through policy. What is frequently portrayed in public controversies and debates is that "religion" and "religiosity" necessarily oppose sexual diversity, which perpetrates the assumption that certain groups and individuals ought to be seeking freedom from religious imposition. As important policy changes are being formulated, the urgency to reflect more critically about narrow and essentialized identity constructions within policy is of critical importance. There will continue to be conflict in the public arena regarding religion and sexuality, from those who identify solely with one aspect and condemn or criticize the other, however if our policies and the application of policies can become more adaptive in response to these challenges, perhaps the assumed inherent conflict can be managed with more productive, alternative strategies.

I propose we begin to think not just about how creed-based rights or religious identification challenges those considered to be 'non-religious,' but rather want to suggest that it is time to think of how policies of inclusion can be formulated so that religion is not necessarily posited as in conflict with sexual diversity, or equality regarding sexuality.

Relating directly to non-discrimination policies, such as the *Charter*, it is important to reflect on how these policies are intended to be adopted in institutional settings. Recent proposed changes to Ontario's sex education policy caused enough controversy for 2 years of curriculum development to be shelved as a result of 'competing' rights controversies. There is a clear gap between the existence of policies of non-discrimination, policies that recognize intersections and the experience and application of policy within a lived context. Although publicly funded schools are required to commit to the *Charter* and provincial policy, it can be demonstrated that there is a gap between the requirement and the actuality of that in the education environment. This goes to the challenge regarding application of policy, or what I am calling the transmission of policy into experience.

In *Heintz v. Christian Horizons*, Connie Heintz argued that the termination of her employment as a support worker as a result of her sexual orientation violated the *Ontario Human Rights Code*. During her employment at the residence operated by Christian Horizons, Heintz's identity as a lesbian came into conflict with Horizons' Lifestyle and Morality Statement, which prohibits homosexual relationships. Christian Horizons argued that it fell within section 24(1)(a) of the *Code*, which permits restrictive hiring or hiring preferences for certain organizations based on one of the proscribed grounds of the code, in this case is creed.

In considering these rights, the Tribunal states: "At the same time, it has been said that no right is absolute. Rights may conflict, and courts and tribunals may be called upon to reconcile competing interests and balance conflicting rights" (para 9). Arguing that the Human Rights Commission is an agency with a mandate to promote human rights, the Tribunal felt that:

> *the issue in this case is whether an organization which is effectively 100 per cent publicly funded, which provides social services on behalf of the government to the broader community, and offers those services to individuals without regard to their race, creed or cultural background, may discriminate in its hiring policies on the basis of one of the proscribed grounds in the* Code *(at para 12).*

Christian Horizons is a publicly funded institution, and therefore it was argued by the Tribunal that they are required to commit to policies of non-discrimination as outlined in the *Code*. The Tribunal did not claim that the organization was not religious simply because it received public funding (para 116), noting "There may well be legitimate public policy discussions and debate about whether an organization that has restrictive membership or employment policies should receive public funds" (para 116) but stated that Christian Horizons' client base and organization structure was such that it could not be considered under the *Code* regarding exemptions for employment and hiring purposes based on religious beliefs.

In the decision, the Tribunal argued that the *Code* was violated because Christian Horizons suggested Heintz seek counselling to effect 'restoration'; they created/permitted a poisoned work environment (and no steps were taken to remedy harmful effects); and they acted on discriminatory views (para 205). Heintz was awarded for damages, and Christian Horizons was ordered to modify policies and to take steps to undergo non-discrimination training with their employees.

Interesting to note is that Heintz herself stated she discovered her changing sexual orientation during the course of her employment with Christian Horizons, and that as a woman of deep Christian faith this required a process of understanding on her own part. This process for Heintz was not aided by the environment in which she worked after it became known that she was a lesbian and was involved in a same-sex relationship. Heintz states, however, that she would not have filed a claim against Christian Horizons had they not been the recipients of public funding. There is a connection for Heintz and the Tribunal between policies of non-discrimination and equal treatment principles and the role of public institutions in safe-guarding those principles.[1]

While I argue that policies require revisions in order to respond to contemporary identity politics, I also mentioned the gap between policy and the experience of policy. In addition to this gap, there is of course the problem of the application of policies in any given tribunal or court case; application which relies on interpretation and judgement by those applying policies. Notions of identity categories and the relationship of aspects of identity such as religion and sexuality go directly to the specific policy controversy regarding gender and sexuality that I turn to here; sex education curriculum.

Recently Ontario witnessed a brief but intense public debate regarding the sex education curriculum, culminating in Ontario's premier claiming that the changes were put on hold to consider the multicultural and religiously diverse needs of the province.

In April 2010, when first asked to comment on the proposed changes to Ontario's sex education curriculum, Dalton McGuinty responded by defending the changes (CBC 2010d). In the aftermath of his defense, however, the Premier backed off the curriculum changes, which have since been placed on hold. Notably, the timeline of events is incredibly brief: McGuinty was first asked about the changes April 21; he had reversed his opinion regarding the proposed changes by April 23.

The revisions that seemed to evoke the most concern were as follows: Grade 1: identifying genitalia using the correct words, such as penis, vagina and testicle; Grade 3: learning about invisible differences, such as gender identity, sexual orientation, and allergies; Grade 6: masturbation and wet dreams; Grade 7: oral and anal sex; how to prevent unintended pregnancy and sexually transmitted infections, including HIV.

These changes were suggested as necessary to adapt to contemporary sexual health education standards and to increase understanding regarding sexual identity; the new topics were to be introduced to students at age and developmentally appropriate stages in their education. The existing curriculum is much more general; the modifications include specific body parts, activities and give name to the topics which should be addressed at any given level.

Two years of development went into the proposed changes, beginning in 2007, including a year of research and consultation with public and Catholic school boards, university faculties of education, health groups and parent groups. The first draft of the proposal was sent out for public feedback, circulated to 5,000 parents in Ontario (many of whom were supportive of the changes), resulting in 3,000 responses which subsequently involved further revision and fact checking prior to finalizing the proposed changes in 2009 (The Star 2010; Globe and Mail a-b).

Controversy in the course of those two days included statements by the Institute for Canadian Values, Canada Christian College and the Greater Toronto Catholic Parent Network. What was repeated in the coverage of the proposed changes and controversy regarding the changes was an emphasis of the continued argument that the opposition to the changes was representative of religious ideologies. This repeated emphasis reaffirms the notion that not only is it acceptable for "the religious" to oppose teaching sexuality, it is in fact expected that religious groups/individuals will feel this way.

In response to the swift controversy over the curriculum, Premier McGuinty backed away from the policy changes, citing the need to consider the multicultural and religious diversity of the province and concerns of parents (CBC2010a-c). Parents who were interviewed about the curriculum expressed both support and opposition to the changes, there was not the same one sided representation of what 'the parents' felt. McGuinty has since introduced the "Accepting Schools Act" which has elicited a new firestorm of debate.

Current research that challenges binary oppositions regarding religion and sexuality includes a recently completed study in Britain and Wales regarding religious and sexual identities of youth (Yip et al. 2011). Among the projects findings, respondents who articulated both religious and sexually diverse identities (i.e. gay, lesbian, etc.) often reported feeling a requirement to downplay their religious identities within particular LGBTQ communities. Respondents' who self-identified as both religious and lesbian/gay/bisexual, etc., did not however report internal struggles regarding these aspects of their identity, but rather that external communities and social forces required them to marginalize at least one part of the identity in contemporary British society. Queer religious women interviewed in the Los Angeles area have demonstrated that religious communities extended welcoming arms to the LGB community in the Los Angeles area for over 50 years, the participants themselves did not report personal identity conflict when addressing both religious and sexual aspects of their identity; rather, the consternation comes from external assumptions and impositions (Wilcox 2011).

Importantly religious identity is also complex, nuanced, fluid and resistant to essentialization. While there are clear voices of individuals who argue that sexual diversity and same-sex relations challenge their religious beliefs, we also have evidence that religious identity is as multifaceted and nuanced as is sexual identity. There is a wide body of literature on the differences between religious teaching and lived religion; or between what religion is assumed to be and how people practice their faith by contextualizing doctrine based on their own needs, experiences, and cultural influences (McGuire 2008). As diverse religious groups continue to cohabit in closer proximity to one another, it becomes increasingly evident that there is no one unified understanding of what being religious means (see Beyer 2008).

Additionally, scholars debate the supposed neutrality of 'the secular' within western countries. Janet Jakobsen and Ann Pellegrini (2008), among others, challenge the use of 'the secular' in its construction as rational, objective and without embedded ideologies, including religious ideologies. Rather, they, and Lori Beaman (2010), argue that the turn toward secularism as a universal, neutral dialogue in fact perpetuates ideological constructions regarding religion, gender and sexuality.

REFLECTIONS AND RECOMMENDATIONS

How do we change policy to be reflective and yet also effective?

How do we ensure that the application of policy correlates to experiential context of contemporary society?

How do we bridge the gap between the policies that are formulated to promote inclusivity/ regulate discrimination and the experiences of the individuals on a daily basis regarding identity negotiation and equality?

In light of this, proposed further challenges regarding policy regarding religious rights and LGBTQ identity are to think on:

1. Intersections: consideration for the intersections of religion, gender identity and sexual orientation; the preconceived notion that they will necessarily be in competition ignores the challenges faced by individuals who might be discriminated against because of multiple aspects of their identity.
2. Transmission: it is part of the process that individuals will come to the courts or tribunals as a result of identity politics; when we continue to perpetrate the notion that religion and sexual diversity are inherently in conflict, we end up transmitting the message that one remains privileged over the other; and we miss transmitting from policy to application based on authentic experiences of individuals for whom policy is not so black and white.

NOTES

[1] It is important to note that the *Code* includes consideration for grounds of intersection regarding policies of non-discrimination and protection. S 2.2 of the *Code*, regarding sexual harassment, states "A person may be especially vulnerable when they are identified by more than one *Code* ground." Citing multiple possible examples of vulnerability based on multiple grounds, such as race, disability, sexual orientation, it is stated "Where multiple grounds intersect to produce a unique experience of discrimination or harassment, we must acknowledge this to fully address the impact on the person who experienced it."

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