THE RELATIONSHIP BETWEEN RELIGIONS AND A SECULAR SOCIETY

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ABSTRACT

The first step in developing a framework for the interface between a secular society and religion is to define the role of the "secular" state. This paper identifies four interpretations of the meaning of "secular" and identifies legal cases that use several different interpretations. In addition, it gives a strong rationale for the protection of religious rights. After reviewing some high profile conflicts between religion and the secular state, the author argues for the broadest inclusion of religious adherents in Canadian society.

Every society has a dominant culture, usually with religious roots. Canada had a dominant Judeo-Christian ethos until the rise of secularism in 1960s. The advent of the *Charter* in 1982 accelerated the secularization of Canadian society. Secularization reflected a move away from religion as a dominant source of social mores in the western world. As well, it is characterized by the rise of individualism, where the individual is more important than the community. Religious adherence is no longer valued in Canadian society but rather is often viewed with suspicion. How then can one justify accommodation of religious adherents?

Religion is a fundamental part of human dignity. For many adherents, it is far more than a mere lifestyle choice, it is the deepest part of who they are. To violate a person's religious freedom or require them to act against their religious beliefs or practices violates the very core of that person's being.[1] Sociological studies have shown positive benefits of religious affiliation for school performance, positive family life, well-being and contribution to community life.[2] Religions also provide for rites of passage such as marking birth, marriage and death.

Religions generally promote ethical, law-abiding behavior in their adherents. Religious adherents strive to obey the law and respect the authority of the state. Religion thereby fosters "moral self-government."[3] Kelsay and Twiss argue, "Cooperation, sharing, and altruism can all be related to the sense of identity that religious traditions provide."[4] Religious institutions are the source of much humanitarian work within Canada and internationally. Religious adherents provide much of the funding as well as volunteer labour for these institutions.[5] However, "these traditions suffer a loss of function when they are removed from the domain of public life."[6] It appears, then, that if religious adherence is valued and accommodated, the benefits that accrue to society are well-behaved citizens that contribute to the well-being of society. If religious adherence is denigrated, if it is marginalized, if it is shut out from public life, society will not only lose the benefits derived from religious adherents but also likely face a backlash from religious adherents.

Opponents of religion like to focus on the divisive effects of religion; on conflict and wars occurring with religious overtones. In many other conflicts, however, religion has been a positive force for peace and for state building. In Poland and East Germany, for example, civil society began in church basements[7]. In South Africa, a national day of prayer contributed to the relative peace in which the 1994 general election was held.[8] Francis Fukuyama argues that religion is part of the "art of associating" that is necessary for the functioning of liberal democracy.[9] Attachment to a religious community therefore facilitates engagement with and pride in democratic institutions.

Freedom of religion is a cornerstone of a free society. Chief Justice Dickson articulated the broad right to religious freedom in ringing terms in the first Supreme Court of Canada judgment on section 2(*a*) of the *Charter*:

> *A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one*

> *which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the Charter. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. 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 belief by worship and practice or by teaching and dissemination.*[10]

These lofty words are inspiring but the reality is that religious teachings and practices often bump up against the prevailing secular society.

This raises the question of what is meant by "a secular society." Iain Benson helpfully developed a typology in a 2000 article titled "Notes Towards a (Re)Definition of the 'Secular'"[11] to identify the various ways that a secular state can interact with religion within its borders:

(1) neutral secular: The state is expressly non-religious and must not support religion in any way;
(2) positive secular: The state does not affirm religious beliefs of any particular religion but may create conditions favourable to religions generally;
(3) negative secular: The state is not competent in matters involving religion but must not act so as to inhibit religious manifestations that do not threaten the common good;
(4) inclusive secular: The state must not be run or directed by a particular religion but must act so as to include the widest involvement of different faith groups, including non-religious.

There is thus not one, single understanding of the meaning of "secular" when it comes to the responsibilities of the state towards religion.

The case *Chamberlain v. Surrey School District #36*[12] is a rare case in actually defining "strictly secular" in section 76 of the BC *School Act*.[13] The case concerned school board approval for three storybooks, which featured same-sex parents, as "educational resource material". Two teachers, both members of Gay and Lesbian Educators (GALE), applied to have the books approved for use in kindergarten and grade 1. When the Surrey school board held public hearings on approval, there was substantial opposition from religious leaders and adherents, but also from others with no identified religion. Most of those opposed agreed that the content of the books was controversial and these issues are more appropriately dealt with at higher grades. The school board voted against approving the books. The two teachers, and others, applied for judicial review arguing that the school board based its decision on religious concerns.

The case generated five different views of the meaning of "strictly secular." At the B.C. Supreme Court, Justice Saunders ruled, "In the education setting, the term secular excludes religion or religious belief."[14] Further, she held, "I conclude that the words 'conducted on strictly secular… principles' precludes a decision significantly influenced by religious considerations."[15] She went on to review the affidavits submitted by religious leaders[16] and testimony from trustees that they were influenced by these concerns and concluded, "by giving significant weight to personal or parental concern that the books would conflict with religious views, the Board made a decision significantly influenced by religious considerations, contrary to the requirement in s. 76(1) that schools be 'conducted on strictly secular… principles'."[17] This reasoning is fairly clearly "neutral secular". Justice Saunders believes that the state must not support religion even by allowing religious arguments to be considered by a state agency.

The B.C. Court of Appeal overturned Justice Saunders' decision.[18] Justice Mackenzie, writing for a unanimous court, said, "To interpret secular as mandating 'established unbelief' rather than simply opposing 'established belief' would effectively banish religion from the public square."[19] Further, "No society can be said to be truly free where only those whose morals are uninfluenced by religion are entitled to participate in deliberations related to moral issues of education in public schools."[20] Justice Mackenzie upheld the Board's decision as it was based on parental concerns. This decision allowed all arguments to be made in the public square and left it to the democratic process to decide the outcome. This is clearly "inclusive secular."

The case was then appealed to the Supreme Court of Canada where three justices wrote decisions. Chief Justice MacLachlin, writing for the majority, said, "A requirement of secularism implies that, although the Board is indeed free to address the religious concerns of parents, it must be sure to do so in a manner that gives equal recognition and respect to other members of the community." In this case, then, the concerns of religious parents could not justify excluding a protected minority group, same-sex parent families. Chief Justice MacLachlin's reasoning appears to fit the "negative secular" type. She appears to also suggest that the state was in danger of being directed by a particular religion, which would allow the argument to potentially fit within the definition of "inclusive secular."

Justice LeBel wrote a concurring minority judgment finding that the Board's decision was contrary to the requirement that schools be conducted on a "strictly secular" basis. He says, "The overarching concern motivating the Board to decide as it did was accommodation

of the moral and religious belief of some parents that homosexuality is wrong, which led them to object to their children being exposed to story books in which same-sex parented families appear."[21] However, he says Justice Saunders goes too far in saying that there is no place for religious views in the public square.[22] Rather, it is only religious views that are intolerant of others that cannot be countenanced by the Board, and certainly cannot be the basis for a policy decision. Justice Bel's reasoning belies a "negative secular" rationale.

Justice Gonthier dissented and followed Justice Mackenzie's approach that it is the role of the school board to make decisions about resources and they are entitled, indeed required, to take into consideration the views of parents in the community. Justice Gonthier does not appear concerned that there is moral disapproval of lifestyles. Further, he explicitly refuses to relegate religion to the private sphere, "retreated into the religious 'closets' of home and church,"[23] as he puts it. Justice Gonthier clearly believes that Canadian society does not require conformity of worldviews, "The key is that people will disagree about important issues, and such disagreement, where it does not imperil community living, must be capable of being accommodated at the core of a modern pluralism."[24] As with Justice Mackenzie's reasoning, Justice Gonthier's argument fits within the "inclusive secular" paradigm.

When it comes to accommodating individual religious practices, which would comprise the majority of human rights complaints, Canadian law appears to support the contention that Canadian society fits within category (4), "inclusive secular." The *Charter of Rights and Freedoms* has broad protection for freedom of conscience and religion under s. 2(a), and for equal protection of the law without discrimination based on religion under s. 15(1). Supreme Court of Canada decisions also support this interpretation of the place of religious freedom in Canadian society. In the *Same-sex Marriage Reference*, the court stated that religious freedom is "broad and jealously guarded."[25] This has certainly been born out in cases like *Multani v. Commission scolaire Marguerite-Bourgeoys,*[26] upholding the right of a Sikh boy to wear the kirpan at school, and *SyndicatNorthcrest v. Amselem*,[27] supporting the rights of Orthodox Jews to observe Succat by building structures on their balconies over the objections of their condominium corporation.

These models of interpreting "secular" apply in Ontario human rights law become very important when dealing with complex issues involving the interface between religious groups and society. A current controversial example is that of Valley Park Middle School in North York that provides space for Muslim students to have Friday prayers under the direction of an imam. The school accommodated the religious needs of a significant group of students in the school. However, parents and other religious leaders raised issues of whether this decision was itself discriminatory in singling out one group for perceived "special treatment," leaving the school appearing to endorse a particular religion. Others expressed concerns about discriminatory treatment of girls, a competing human right. Justice Gonthier and Justice Mackenzie's approach would allow negotiation to allow the broadest possible inclusion of religion and religious observance. Justice MacLachlin's approach would allow for Muslim prayers so long as no one else was excluded. Justice LeBel and Justice Saunders would likely exclude religious observance at the school on the basis that public schools are not an appropriate forum for religious observance. It is clear that one's interpretation of the interface between religion and the secular society can determine the outcome of a claim of discrimination on the basis of "creed".

Simplistic answers do not suffice when addressing the place of religious observance, and religious accommodation, in a multi-religious, yet secular society. I would argue the inclusive secular approach should be used as the starting point; that is maximum inclusion and accommodation of religious observance. Religion is deeply important to believers and should be respected wherever possible.

NOTES

[1] Charles Taylor makes the argument for recognition of "our fundamental defining characteristics as human beings" in "The Politics of Recognition" first published in *Multiculturalism*, Amy Gutman (ed.), (Princeton: 1992); republished in *Philosophical Arguments*, Charles Taylor, (Cambridge, Mass.: 1995).

[2] E.H. Schludermann, S. Schludermann and C. Huynh, "Religiosity, Prosocial Values, and Adjustment among Students in Catholic High Schools in Canada" (2000), 21 Journal of Beliefs & Values 99; Kurt Bowen, *Religion, Participation, and Charitable Giving: a report,* (Toronto: 1999); Warren Clark, "Religious Observance: Marriage and Family", (Autumn 1998)Canadian Social Trends, Statistics Canada, B.G.F. Perry, "The Relationship between Faith and Well-Being" (1998), 37 Journal of Religion and Health 125; M. Baetz, R. Bowen, G. Jones and T. Koru-Sengul, "How spiritual values and worship attendance relate to psychiatric disorders in the Canadian population," (2006), 51 Canadian Journal of Psychiatry 654.

[3] Winnifred Fallers Sullivan, *Paying the Words Extra: Religious Discourse in the Supreme Court of the United States,* (Cambridge: 1994), at 163.

[4] John Kelsay and Sumner Twiss, (eds.), *Religion and Human Rights*, (Waco: 1994), at 3.

[5] Statistics Canada, *Survey of Giving, Volunteering and Participating*, (Ottawa: 2004).

[6] *Ibid*, at xi.

[7] Douglas Johnston and Cynthia Sampson, (eds.) *Religion, The Missing Dimension of Statecraft*, (New York: 1994).

[8] Michael Cassidy, *A Witness Forever – The Dawning of Democracy in South Africa; Stories behind the Story*, (London: 1995).

[9] Francis Fukuyama, *The End of History and the Last Man*, (New York: 1992), at xix.

[10] *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295. The court struck down the *Lord's Day Act* as offensive to religious freedom on the basis that it had a religious purpose, namely to enforce the Christian Sabbath.

[11] Iain Benson, "Notes Towards a (Re)Definition of the 'Secular'," (2000), 33 U.B.C.L.R. 519.

[12] (1998), 60 B.C.L.R. (3d) 311 (S.C.); (2000), 80 B.C.L.R. (3d) 191 (C.A.); [2002] 2 S.C.R. 710.

[13] R.S.B.C. 1996, c. 412.

[14] *Supra* note 12, 60 B.C.L.R., at para. 78.

[15] Ibid.

[16] Affidavits were submitted from Christian, Hindu, Muslim and Sikh leaders.

[17] *Supra* note 12, 60 B.C.L.R., at para. 95.

[18] *Supra* note 12, 80 B.C.L.R.

[19] *Ibid*. at para. 30.

[20] *Ibid*. at para. 34.

[21] *Supra* note 12, S.C.R., at para. 189.

[22] *Ibid*. at para. 209.

[23] *Ibid*. at para. 135.

[24] *Ibid*. at para. 137.

[25] [2004] 3 S.C.R. 698,para. 53.

[26] [2006] 1 S.C.R. 256.

[27] [2004] 2 S.C.R. 551.

A BIT OF HISTORY...

Getting to the root causes of discrimination

Because historical and institutional discrimination is so pervasive and complex, the Commission cannot deal with it effectively only by responding to individual complaints. It is essential that its mandate be broadened and its procedures be made sufficiently flexible to enable it to cope with human rights problems that are at the root of discrimination, rather than dealing only with the individual incidents of discrimination that arise from such problems.

Source: *Life Together*, 1977