RELIGIOUS DIVERSITY, RIGHTS AND REASONABLE ACCOMMODATIONS RESOLUTION

ABSTRACT

The paper addresses the possible outcomes of a continued dramatic increase of Muslims in Canada. How do we resolve the issues of settlement, adaptation and accommodations crucial on the part of both immigrants and Canada? Not all questions have easy answers, but issues such as the tensions between religious or cultural rights and other rights such as the equality of women must be openly discussed. The *Charter* provides a broad framework of rights and freedom, but because it does not clearly define if any one right has priority over others, the tensions continue.

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In preparation of the 150th anniversary of the Canadian federation, the Department of Canadian Heritage commissioned a study on possible population change by 2017.

The projections state that the total population will not increase dramatically, but the composition of the population will change. Of the 33-36 million, 20% will be visible minority people (6.3 million), with half being either South Asian or Chinese.

In terms of religion, about 10% of the total population will be non Christians. Almost 5% of the total population will be Muslims (1.5 million) from all parts of the world, and most will live in urban centers. This means that there will be greater discrepancy of ethnic origins between those who live in urban areas and those who live in rural or small towns.

There is less hostility towards other religions such as Hinduism or Buddhism and a lot more against Islam and Muslims. Whatever the growth factor, there will be more Muslims in Canada and this immediately raises fears for the future of Canada. Sadly, I think too many people see Muslims as the fifth column within the country, because our motives and our religion are so suspect.

Both the *Charter* and the *Multiculturalism Act* address the topic of religious diversity, under cultural heritage.

As Canadians, we acknowledge that the *Charter* provides the framework for our values and most of us do proudly acknowledge our multicultural society. By the way, I would like to add that we pay little heed to the values of our aboriginal peoples, and these are seldom incorporated into what we call "Canadian values."

The *Charter's* Section 27 states the importance of the "preservation and enhancement of the multicultural heritage of Canadians", and this formed the basis of the *Multiculturalism Act* of 1988. The *Act* (3a) states that "multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage."

The *Charter* is clear that rights and freedoms must be within "reasonable limits," and some are interpreting this to mean "reasonable accommodation" of the demands of newer immigrants to preserve their cultural heritage, including their

religious freedom. Tensions arise when one group sees their demands as consistent with the *Charter* and the *Multiculturalism Act*, while other groups see these as pushing the reasonable limits.

Religious diversity is not practiced in a vacuum and has to be seen within the context of other rights outlined in both the *Charter* and the *Multiculturalism Act.* A number of legitimate questions are being raised regarding adaptation, participation and integration. These include how diversity, including religious diversity, should be reasonably accommodated. It is true that "older" Canadians are feeling a great sense of anxiety and loss when differing values and practices are integrated into Canada.

Questions which must be addressed include:

How does diversity function within the unity of Canada? How do we ensure a sense of belonging and loyalty to Canada? Should we be concerned about the development of religious or ethnic enclaves? Does diversity lead to a fragmentation of our society?

Does religious diversity mean that each group should be identified only by one characteristic, which is religion?

Should recognition of all the religions in Canada include implementation of all beliefs and practices of that particular religion, including changes to our laws? For example, does this mean that the State should fund public schools based on different religions, or laws prescribed by each religion should be practiced in our legal system?

What changes will occur and how will these affect the nature of our society? Will the demands of each religious group compete and conflict, or can there be some common ground as to how this diversity will be implemented?

How should the conflict between majority and minority rights be resolved?

The questionable assumption regarding religious and cultural diversity is that there is a single community comprised of all Christians, all Jews, all Sikhs or all Muslims. However, no religious community is monolithic, homogenous, or holds dear the same values, nor demands the same rights. In reality, there are vast differences within the same faith communities and greater similarity between those of any religion who are more literal and traditional in their interpretations, whether they are Muslims, Jews or Christians. Muslims, like Christians, come from all parts of the world. Despite extreme pressure from countries like Saudi Arabia for Islam to be one single community of believers, there is no one Islam, because it is influenced by our cultures and histories. This is the wonderful diversity within Muslims.

So we must be cautious not to generalize any one religious or cultural group's desires and ability to adapt. We must somehow assess if there is openness and flexibility to embrace new learning and active tolerance to live with others, or whether people transplant all their old ways of life to their new country. Some people not only want all their old ways, but add other practices which had little meaning for them back home.

We do not have to wait a decade to deal with the changes, as many have happened and others are in process. For example, when the issue of the Sikh turban for an RCMP officer arose, for many this signaled the end of Canadian-ness, and yet now this does not seem to be of great concern. Though Muslim women wearing the hijab, head covering, still face prejudice, I think there is a general feeling of live and let live. However, the more recent issue of the niqab, face covering, is creating a lot of anger and discomfort. Is this pushing the limits of reasonable accommodation?

I have recently returned from an incredible journey to Syria, Lebanon, Jordan and Italy, where there is high interest in the experiences of Canadian Muslims and in the application of Multiculturalism.

The dilemma of religious diversity reminds me of an ad in Lebanon. Because of the history of Lebanon, the state treads carefully between the various religious sects. This is demonstrated in the fact that each sect – Christian, Muslims or Druze – has its own specific family laws and each law is practiced in different courts. The system is called "confessional" and each citizen must declare her confession and those laws then apply to her. There are 18-19 confessional legal systems.

The Lebanese ad shows a British person in front of a map of Britain and he says, "I am British" then a map of France comes up and the person standing in front of that map, says, "I am French." When a map of Lebanon comes up, the man in front says, "I am Maronite, or Druze, or Shia", instead of simply "Lebanese".

Let us make sure that this is not allowed to happen to us in Canada!

Within the discussion of religious diversity, one must discuss the role of religions in matters of the state and in our public arena. On the surface,

it seems that there is no place, in the public domain, for religion in Canada. The values of the Enlightenment (18th century), such as reason, science, liberalism and democracy provide much of the underpinning of our state. However, religion is still present, because our head of state, the Queen, is Defender of the Faith, and the *Charter's* preamble is that "Canada is founded on the principles that recognize the supremacy of God and the rule of law."

For some Christians, their acceptance of the separation of state and religion is based on Christ's saying "Render unto Caesar the things which are Caesar's, and to God the things that are God's" (Matthew). However, we know that there have been and continue to be some Christians who want their religion to be the driving force in both the public and private arenas.

To me it seems that debating secularism versus religion is a false dichotomy, because they are neither rigid categories nor mutually exclusive. What is more significant is the question of the role any religion should have in state legislature, public policy and in the laws of the land.

I think that a secular state at its best recognizes the religion of its citizens, but is a state without a religion. It gives no preferential treatment to any one religion and provides protection for freedom of religion, and freedom from the state's imposition of any religion. The state develops laws based on human rights, not on those founded on sacred texts, which are often immutable and not subject to change.

As a believing woman, this gives me great comfort, as I am free to practice my faith, under the protection of laws and with no interference from the state or from any dominant/majority religion. I also hope that the state will protect me if there is conflict between my belonging to a specific religious or cultural group, and my rights as an individual. This does not contradict or conflict with my or anyone else's human need for spiritual meaning of life, for the here and now, or for the hereafter.

The issue of majority and minority group rights is dealt with by Professor Will Kymlicka, one of the foremost thinkers on multiculturalism. He argues that host states have the responsibility to assist in minority group's integration and ensure that their rights are incorporated, in order to give them a feeling of belonging. He acknowledges that some minority groups may have practices which are illiberal but insists that illiberal practices of the group will not be tolerated by society at large, especially in view of our *Charter*. Is this actually true? As Professor Susan Olkin argues, the rights of the individual who belongs to the group are at times subsumed under the group's rights, even if this means her rights are jeopardized. The state must protect the rights of the individual versus the rights of a minority group, whether cultural or religious. This balancing is not easy for some women, whose strong social need to belong to a group and the interdependency of their relationships sometimes takes precedence over their own individual rights.

Does religious diversity mean that each group should be identified only by one characteristic, which is religion?

Public discussion on diversity, pluralism, the application of the principles of the *Charter* and resolution of "reasonable accommodations" is very timely. But please, let us not phrase the discussion in racist or pre-conceived notions, nor focus on one religious, ethnic or racial group.

Premier Jean Charest opened a Commission in Quebec, with eminent philosopher Charles Taylor as the chair. Quebec and Charles Taylor are strong advocates for the recognition and protection of Quebec as a nation/community with its own distinct culture and language. Taylor has recently won the prestigious Templeton Prize for his work on religion and spirituality. It will be very interesting to see what will be recommended to address the needs of other ethnic or religious groups, while continuing to protect the Western based French Canadian distinctive culture. Taylor speaks of the "identity fright" of the French Canadians and of newer immigrants who also fear the erosion of their identity and the growing sense of alienation in a new land.

As a minority person, as a woman and as a Canadian Muslim, I obviously want religious diversity, because I benefit from it. I want the

elimination of injustices, racism and prejudice. However, I also acknowledge that there has to be an accommodation which is reasonable and based on the good of all, and which muse be negotiated amongst us, with respectful criteria for assessing the demands.

I know that focus is now on Muslims who are seen as different because of religion and culture. Many of the issues reported in the media related to religious diversity have to do with Muslims and Islam, whether it is women's dress or demands for gender segregation or rooms for prayers.

It is currently very difficult to be Muslim. It is exhausting to continuously defend the practices of all Muslims, all over the world, as if we are all a homogenous part humankind. This is not so. There are many of us who believe that the values articulated in the *Charter* are the same as those espoused in the Quran – the equality of all people, social justice and compassion. We disagree with some of our co-religionists, who claim that the conflict of values is such that we must self segregate or demand rights which sharply identify us as Muslims. My deep spiritual life requires protection of my rights. However, others' rights are as important as mine.

It is unfair that prejudice, racism and stereotyping should define Muslims and our religion, and make life so difficult that we are turned away from loyalty to or participation in our country.

Some recent examples could be reviewed as test cases for religious diversity:

1. The right of a Sikh boy to wear his kirpan to school, although knives of any kind were banned from schools.
2. The request of a Jewish Hassidic boys' school that the neighbouring YWCA block the windows of their gym where women were exercising, as this was distracting for the young men.
3. A soccer referee telling an 11 year old girl wearing the hijabi (Muslim head covering) that she could not play at a competition.
4. A Supreme Court decision allowing a Jewish family to build a sukkah (temporary shelter for a few weeks a year) on an apartment balcony.
5. Some Muslim women are now appearing in public wearing the niqab (full face covering). Is this acceptable, if we think that women should be free to choose how to dress?
6. The demands for publicly funded religious schools, based on the fact that Canada already funds Catholic schools.
7. The advocating of "family values" by some Christians, which implies no freedom of choice for women regarding abortion, no rights for homosexuals, no birth control, family planning or divorce.

Perhaps each case has to be assessed on its own merit, but it may be wiser to develop a set of principles and criteria on which to assess what is reasonable accommodation within the limits of our shared common values. Some argue that the *Charter* already defines the framework, and that the courts are the likely place for decisions. However, the courts have not been consistent.

An example of an ill conceived notion of religious diversity is that of the judge who stated that the severity of the sexual abuse of a daughter by her Muslim father was lessened by the fact that he sexually abused the girl anally to preserve her virginity. The judge concluded that as virginity is a value amongst Muslims, the father's sentence should be less severe. This is the worst kind of case of differential treatment, prejudice and cultural relativism.