PROTECTING RELIGIOUS FREEDOM IN A MULTICULTURAL CANADA[1]

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ABSTRACT

This paper seeks to provide a social and historical context for the efforts of the Ontario Human Rights Commissions attempt to re-evaluate its policy on addressing discrimination based on "creed" and protecting religious freedom. Most Canadians assume that because Canada is a secular, multicultural society, the problems of religious intolerance and discrimination have disappeared. Consequently, they are confused by public conflicts such as the "reasonable accommodation" debate in Quebec and the "sharia courts" controversy in Ontario. Part of the confusion arises from the fact that, since the 1970s, Canada has become both more secular as well as more religiously diverse. Canadian Sikhs, Muslims, Hindus, Buddhists, Chinese and Jews – as well as aboriginal peoples – struggle to integrate themselves into structures that had been defined first by Christianity and then by Canadian-style secularism. At the same time, new forms of religious intolerance and discrimination have emerged, challenging Canada's efforts to become a multicultural society.

Many Canadians are confused about the re-emergence of questions of religious diversity and freedom in public debates about human rights. Some thought that religion had ceased to be an important element of identity and social dynamics. Others assumed that the "separation of church and state" – along with legal guarantees of freedom from religious discrimination (the *Canadian Charter of Rights and Freedoms 1982,* for example) – had put the issue to rest. Yet it is now 2012 and religion is front and centre in a variety of public policy debates in areas as diverse as citizenship, security, employment, municipal zoning, education, healthcare, justice and human rights. The new public presence of religion has inspired the Ontario Human Rights Commission – which already has a fairly progressive policy on religious freedom and protection from discrimination based on "creed" (Ontario Human Rights Commission, 1996) – to revisit the question.

Consequently, many are puzzled and disturbed by the return of religion to the public sphere. In fact, it is nothing new. Since its foundation, the European settler society has struggled over how best to govern religious diversity. In broad terms, three solutions have been attempted: a single, state-supported Christian church with little religious freedom (1608-1841); a "Christian Canada" with no official church, but a decidedly Christian culture and state cooperation with a limited number of "respectable" Christian churches (1841-1960); and a secular society with a greater "separation of church and state" and a multicultural approach to religion (1960-present) (Bramadat and Seljak 2008). Now, fifty years into this third phase, many Canadians thought all of the problems that so plagued the previous phases (i.e., insufficient legal recognition of religions and insufficient protection against discrimination) had been resolved.

Paul Bramadat and I (2012) have argued that these questions have emerged in a unique period in Canadian history, the interregnum between a secular and a post-secular Canada, i.e., a society in which religious communities are free to worship and contribute freely and fairly to public life and in which religious communities accept and recognize one another as well as the neutrality of the state (Casanova, 2008, p. 113). My goal in this brief article is to illustrate where we are now (a putatively-secular Canada), what new social developments have arisen to challenge that arrangement, and what is moving us to a post-secular society. In this manner, I hope to contextualize historically and socially the current efforts of the Ontario Human Rights Commission to update its policies on religious freedom and diversity.

PROTECTING RELIGIOUS FREEDOM IN A CHANGING SOCIETY

Because many Canadians have ceased to think about religion at all, they do not recognize the persistence of religious intolerance (attitudes, values and beliefs) and discrimination (actions, practices and structures) – nor their pernicious effects. However, religious intolerance and discrimination continue to present significant barriers to the goals of any society that wants to call itself democratic, egalitarian, participatory, and multicultural. Religious intolerance and discrimination assume three main forms:

1. Despite great advances on some fronts, many Canadians have not overcome traditional religious prejudices rooted in the historical connection between Christianity and Canadian national identity.
2. Moreover, new forms of religious intolerance and discrimination have arisen in which tensions between two groups — say between Hindus and Sikhs or Muslims and Jews — are not grounded in Canadian history or in relations between local communities in Canada, but in recent international conflicts (e.g., between Hindu and Sikh communities in India after 1947 and between Jews and Muslims in the Middle East after 1948).
3. Most importantly, the assumption that Canada is a secular society that has basically resolved the problem of religious intolerance and discrimination blinds Canadians to "structural discrimination" or "religious disadvantage" that many groups suffer (Seljak, Benham Rennick, Schmidt, Da Silva & Bramadat 2007). Certain religious groups may find themselves at a disadvantage simply because secular Canada is structured to accommodate mainline Christian religions. For example, having Sunday as a common day of rest allows most Christians to attend worship services, while members of smaller communities, such as Buddhists or Hindus, often have to move their holy day celebrations to the nearest Sunday.

PROBLEM OF RELIGIOUS INTOLERANCE AND DISCRIMINATION IN CANADIAN HISTORY

The current policies of the Ontario Human Rights Commission – along with other legal guarantees of freedom of religion — are rooted in the attempt to address the injustices of Canadian history, specifically that era of Christian Canada (roughly 1841-1960). In fact, Christian Canada – really a compromise between mainline Protestant and Roman Catholic nation-builders — was not equally welcoming of all types of Christianity. The mainline Protestant churches (Anglican, Presbyterian and United) received special government respect, access, and support. The Roman Catholic Church shared in this special status – although in a more limited way. Other mainstream denominations (Lutherans, Baptists, etc.) were also included in the circle of respectability. However, more marginal Christian groups, such as Mennonites, Jehovah's Witnesses, Hutterites, Eastern Orthodox and conservative evangelicals were excluded (Seljak, Benham Rennick, & Shrubsole 2011). While there was no official state-church or "establishment" in Canada's first century after Confederation, the mainline churches formed what sociologists call a "shadow establishment." In broad terms, to be a (proper) Canadian, one had to be a (proper) Christian – in the same way that one had to be white or male. Indeed, throughout Canadian history, religious chauvinism and prejudice has most often intersected with racism and sexism (along with hetero-sexism, and class prejudice).

The consequences of this widespread assumption (to be Canadian was to be Christian) have been lamentable. It was the basis for the dismissal of Aboriginal spirituality and life-ways, as well as the efforts to convert and "civilize" Aboriginal peoples. Eventually, this assumption led the Canadian government and Christian churches to create the disastrous system of day schools and residential schools for aboriginal children (Miller 1996). It also legitimated discrimination against non-Christian Canadians, such as Sikhs, Hindus, Buddhists, Muslims and Jews. What is often forgotten though is that minority Christian groups (such as Doukhobors, Mennonites, etc.) were also victims of this prejudice. Indeed all non-conformists lived under a cloud of disrepute, which is why new religious movements – such as those that spread in the 1970s – were greeted with widespread hostility and suspicion, even though Canada was becoming a more secular society at the time. Finally, one has to mention the anti-Catholicism that one found almost everywhere in Protestant Canada before the 1960s. Often tied to prejudice against French Canadians, who were overwhelmingly Catholic, anti-Catholicism in the first century of Canada's existence was also linked to anti-immigrant sentiment aimed at the Irish, Italians, Germans, and other newcomers from Eastern and Southern Europe (Seljak, Benham Rennick, Schmidt, Da Silva & Bramadat 2007).

LEGAL PROTECTIONS OF RELIGIOUS FREEDOM AND SECULARIZATION

After World War II, and especially during the 1960s, attitudes towards religious tolerance and freedom in Canada began to change. In order to address widespread religious intolerance and discrimination still evident in the 1960s, various levels of government adopted legal protections against discrimination based on "creed." Our current protections are products of these initiatives. So, for

example the *Canadian Charter of Rights and Freedoms* (1982) guaranteed the freedom of religion and conscience in Section 2. Freedom from religious discrimination was also guaranteed in the *Canadian Multiculturalism Act* (1988), the *Canadian Human Rights Act* (1985) along with various provincial human rights codes, the *Employment Equity Act* (1995), and the *Canada Labour Code* (R.S., 1985, c. L-2). Along with guaranteeing protection against discrimination based on religion, these laws – and especially the *Charter* – curtailed Christian privilege in Canadian public life, having the net effect of creating a wider separation of church and state.

The separation of church and state and the broader secularization of Canadian society was, in part, also an attempt to address the problem of religious privilege and discrimination against persons of a minority faith tradition or of no faith. Secularization was embraced in Canadian public culture as part of the strategy of undermining Christian privilege and building a state that demonstrated "equal access, equal distance, equal respect, or equal support to all the religions within its territory" (Casanova, 2008, p. 113). It is an on-going project, as the vestiges of Christian Canada (public funding for Catholic schools in a number of provinces, for example) remain. Still, after the 1960s, Christianity was increasingly excluded from decisions about education, health care, social services, and other public policy areas. More and more, it lost its power to define public morality. So for example, courts and government changed laws on divorce, birth control, abortion, Sunday shopping, and same sex-unions, and in each instance moved away from enforcing Christian ethics on the Canadian population.

The net effect of this "social disestablishment" of Christianity was the privatization of religion. Religion was increasingly defined as properly belonging to the private realm of personal interiority, family relations, local associations (which is how religious communities were redefined), and ethnic groups. It was largely this privatized form of religion, that Winnifred Fallers Sullivan (2008) identifies as "private, voluntary, individual, textual and believed" (p. 8), which received protection under the new regime.

NEW CHALLENGES

Since the 1960s, several social trends have challenged secularization and the privatization of religion, presenting new challenges to those who wish to protect religious freedom and promote religious diversity. For example, the liberalization of immigration laws after 1968 has resulted in an increasingly diverse society, which included the growth of non-Christian religious communities. From 1991 to 2001, the number of Canadians calling themselves Muslim, Hindu, Sikh or Buddhist on the Canadian Census increased dramatically (Statistics Canada, n.d.). Even among Christians there is increasing diversity, with Canadians from Asia, Africa, South America, and the Caribbean now filling the pews. This new religious cosmopolitanism has led many to express anti-immigrant sentiments around religious issues, such as the wearing of the hijab or kirpan. Anti-immigrant and racist movements now highlight religious difference in their denigration of ethnic and racial minority groups. This new diversity has also led to new forms of intolerance and discrimination in which trans-national ethnic, political, and religious (and ethno-politico-religious) conflicts are now played out on Canadian soil.

Finally, this new diversity has challenged the "closed" form of the Canadian model of secularism based on a rigid model of the privatization of religion. As the Bouchard/Taylor Commission in Quebec observed, "closed" secularism — with its assumption that all religions are essentially unenlightened, tribal, anti-egalitarian, and potentially violent — is part of the problem (Bouchard & Taylor, 2008). For many Canadians, the formula "to be a good Canadian one must be Christian" has been replaced with a new one: to be a good Canadian (egalitarian, democratic, rational and multicultural) one must be secular – or at least the right kind of religious person, that is, one who confines religion to private life.

This last challenge raises the question as to whether Canadian secularism is indeed "open," that is, egalitarian, democratic, rational and multicultural. For instance, does the Canadian state now demonstrate "equal access, equal distance, equal respect, or equal support to all the religions within its territory?" Some argue that, in fact, Canadian secularism is residually Christian, that is, it still bears the imprint of its Christian past, and consequently has not addressed Christian privilege sufficiently. For example, our major social institutions in the realm of education, healthcare and social services are largely structured after their Christian predecessors – even though each has been thoroughly secularized. Canadian public culture is still marked by Christian values about what is allowable, reasonable, desirable or extreme. Consequently, secular Canada is more open to religious communities that have adapted themselves to liberal Protestant norms. The controversies we see around religion in Canada today occur when members of various religious communities refuse to live by those norms. For instance, when they run afoul of generally accepted norms of gender equality by wearing a hijab on a soccer field, or when they expect their religion to play a role in public life, for example, by asking for state funding for Jewish day schools.

CONCLUSION

Many public institutions – including the Ontario Human Rights Commission - have found themselves having to rethink the protection of religious freedom and the promotion of religious diversity. They will need to counter traditional forms of intolerance and discrimination, be sensitive to emerging forms of intolerance rooted in trans-national conflicts, remain attentive to the emerging confluence of racism and religious intolerance and develop sensitivity to lingering Christian privilege. Finally, they will need to work towards a broader definition of religion that includes the diversity of religious belief and practice that we find in Canada today. For, in the end, we cannot protect what we cannot see and how we define religion will determine what we do – and do not – see as worthy of protection and promotion. Attention to Canada's new religious diversity gives us the abilities to see, for the first time, the outlines, qualities, and limitations of Canadian secular human rights regime and its protections of religious freedom and diversity. Such a project will guide us in our transition to a new definition of secularism, religious freedom, and religious diversity.

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A BIT OF HISTORY…

Are practices really neutral?

[In] 1962, it was generally believed that discrimination took place through conscious overt actions directed against individuals. Therefore, the *Code* expressly prohibited such actions and to some degree deliberate and overt discrimination has declined since then. But the Commission's experience in administering the *Code* during the last fifteen years demonstrates that the most pervasive discrimination today often results from unconscious and seemingly neutral practices which may, none the less, be as detrimental to human rights as the more overt and intentional kind of discrimination.

Source: *Life Together*, 1977