# SOME CONTEMPORARY RELIGIOUS ISSUES IN CANADA

**ABSTRACT**

This article explores some contemporary issues related to religion and human rights in modern society. The essay follows a survey of similar issues related to religion and multiculturalism that were canvassed in the Spring 2006 edition of this publication. The present essay focuses on some recent cases under section 2(a) of the *Canadian Charter of Rights and Freedoms* – the freedom of religion clause, the interplay between religion and science and the recent projections by Statistics Canada as to the religious demographics in Canada in 2017. These issues were first discussed at a national conference marking the 25th anniversary of the *Charter* in April 2007.

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In the Spring 2006 issue of *Canadian Diversity*, this author examined some of the contemporary issues facing Canadians in relation to religion, multiculturalism and human rights in Canada. These issues included the use of religious law, such as the *sharia*, in resolving matrimonial disputes, recent cases under sections 2(a) and 27 of the *Canadian Charter of Rights and Freedoms* (freedom of religion and multiculturalism, respectively), the use of cultural defenses in certain criminal matters, the notion of reasonable accommodation in dealing with the sensitivities of religious minorities and the so-called L'Herouxville backlash against the notion and practical application of reasonable accommodation. Since then, the Association for Canadian Studies sponsored a major national conference in Ottawa on the occasion of the 25th Anniversary of the coming into force of the *Canadian Charter of Rights and Freedoms.* This article will examine some of the issues raised at that conference as they relate to freedom of religion in Canada as well as some other religiously based issues now occupying the public arena.

On April 8, 1966, the cover story of *Time Magazine* asked the then shocking question, "Is God Dead?" and, by so doing, made waves that lasted for decades. On April 20, 2007, *Maclean's Magazine* revisited the issue with an equally controversial cover story entitled "Is God Poison?" asserting that "[a] growing movement blames religion for all the world's ills, from the war on terror to AIDS in Africa to child abuse". Similarly, Thomas McFaul, writing in an article entitled "Religion and the Future Global Civilization" in the September-October 2006 edition of *The Futurist,* maintained that "[g]lobalization is intensifying religious conflicts. What will happen in the years ahead?" Clearly, the role and influence of religion in today's world has, in fact, not waned, but rather, has gathered strength and influence and, in reality, dominates many facets of modern life

In October of 2006, the John Humphrey Centre for Peace and Human Rights sponsored a major conference on the topic of "Building World Peace: The Role of Religions and Human Rights". That conference focused on two central themes. One theme related to the power or at least the potential of organized religion to serve as a unifying force in building world peace. This would be achieved through the central message that permeates most religious ideology as expressed by the classic Golden Rule. As enunciated by the great Jewish sage, Hillel, this ideal states that [w]hat is hateful to you, do not do to your fellow man". This 'ethic of reciprocity' is common to the three Abrahamic religions, Judaism, Christianity and Islam, as well as most other major religions.

The October 2006 conference also dealt with another prevailing theme common to modern religions, namely, the unfortunate widespread hate, violence and indeed, killing in the name of God. This phenomenon, which can be observed daily throughout the world, is the negative, dysfunctional, but nonetheless realistic, influence of religion, both historically and in modern times. It is this dichotomy, the competing positive and negative influences of religion, that poses the greatest challenge.

In many societies, religion, culture and politics are highly interwoven and often they are essentially one and the same. Even in those societies in which there is a notional and even theoretical separation of state and religion, there is often a highly interrelated relationship between the two. For example, in recent years, evangelical Christianity has played a major role in the political agenda in modern western industrial democracies. It is a fact that, in spite of the speculation and articles written about the death of God, religion remains a vital force in defining the landscape of modern society and contemporary political debate.

The role of religion in Canada, notionally a secular society, is best illustrated by reference to some recent cases under section 2(a), freedom of religion, of the *Canadian Charter of Rights and Freedoms.* The influence of religion is underscored by an examination of the effect of religious dogma on the teaching and advancement of modern science. This article will also consider the 2017 projections of Statistics Canada as to future religious demographics.

We do not really know whether these minority religious assertions will become acceptable over the long run in a society that, on one hand, respects religious minorities, but on the other hand, is essentially secular in nature.

## Recent section 2(a) cases

In the case of R*esidents for Sustainable Development in Guelph v. 6 &7 Developments Ltd.,* (2006), 133 C.R.R. (2d) 205, the Ontario Municipal Board rendered a decision concerning the zoning of land (permitting the construction of a Wal-Mart store) that neighbours two cemeteries (one public and the other Catholic) as well as a Jesuit spiritual retreat. The Board had denied an assertion that the commercial development was an infringement upon the freedom of religion of those using the spiritual retreat. The Ontario Superior Court of Justice (Divisional Court) upheld the Board's decision and leave to appeal to the Ontario Court of Appeal was subsequently denied. Essentially, the Board and the Court held that either there was no infringement on freedom of religion; that is, the development did not constitute an interference with the religious practice of the users of the retreat, or if there was an infringement, it was trivial and insubstantial in nature. The details of this dispute are also discussed in *Hulet v. Guelph,* [2006] O.J. No. 1488, SS, but the *Hulet* decision was decided primarily on the procedural issue of standing or locus standi.

In Canada and particularly in Quebec, there has been considerable controversy recently about the rights afforded to minority religions and the notion of 'reasonable accommodation' as applied to these minorities. Not surprisingly, over the past 25 years, since the advent of the *Canadian Charter of Rights and Freedoms*, many religious concerns have been argued in our courts. For example, freedom of religion assertions have been brought by members of the Jewish faith (see the *Adler*[1], *C.C.L.A*[2] and *Zylberberg*[3] cases), Sikhs (see the *Multani*[4] case), members of the Jehovah's Witnesses (*see the B. (R.)*[5] case), evangelical Christians (*see Pastor Jones*[6] and *Trinity Western University*[7] cases), Jesuits (see the *Sustainable Developments* case, mentioned above) and Hutterites (see the *Hutterite Brethren* case, discussed below). In view of recent disclosures concerning polygamy and the departure from provincial education curricula in their communities, a freedom of religion assertion by a breakaway Mormon sect in Bountiful, B.C. (the Canadian Branch of the Fundamentalist Church of Jesus Christ of Latter Day Saints) will likely result in a judicial determination.[8]

The most recent case relates to members of the Hutterite community and is somewhat reminiscent of an earlier case. As a tenet of their faith, the Hutterites believe in rural communal living. In the late 1960s and the early 1970s, the Hutterites objected to provincial legislation restricting the

amount of communal landholding in Alberta. The *Communal Property Act* was specifically directed at Hutterites and Doukhabors, although, since there were no Doukhabors in Alberta at that time, it was essentially aimed at Hutterites. The case, *Walter v. Alberta*[9], was a challenge to the constitutional validity of the *Community Property Act*. It was appealed to the Supreme Court of Canada where the court decided in favour of the Alberta government. Of course, there was no constitutionally-entrenched *Charter of Rights and Freedoms* protecting religious minorities at the time. In any event, the offending act was subsequently repealed.

Another issue affecting mostly Hutterites has now emerged and involves a challenge to a recent Alberta regulation requiring photographs on Alberta driver's licenses. Photographs became an integral part of the Alberta driver's license in 1974, although there was provision for an allowable exemption. In 2003, the exemption provision was removed and photographs became mandatory for all. The photo identification on drivers' licenses was meant to assist law enforcement officials in the prevention and investigation of fraud and identity theft, as well as to assist in the promotion of national security. This requirement offends members of the Hutterite faith who believe that being photographed is contrary to the second of the Ten Commandments prohibiting the making "for yourself an idol, or any likeness...". In the case styled, *Hutterite Brethren of Wilson County... v. Alberta*[10], both the Alberta Court of Queen's Bench and the Alberta Court of Appeal (the province's highest court) held that the photograph requirement was a violation of the Hutterites' freedom of religion under section 2(a) of the *Canadian Charter of Rights and Freedoms.* Moreover, the regulation could not be saved under section 1 of the Charter as a "reasonable limit" in a "free and democratic society". As a result, the removal of the mandatory photographic requirement was held to be of no force and effect. It is likely that this case will be appealed further to the Supreme Court of Canada. This matter also bears some similarity to a recent controversy concerning the wearing of a hijab by Muslim women while voting in the 2007 provincial election in Quebec.

In confronting laws and government practices that threaten the rights of religious minorities, the prevailing reaction is that society must take steps to reasonably accommodate the needs and sensitivities of those minorities. Given the recent reaction to the notion of reasonable accommodation[11] in general, and to the *Hutterite Brethren* case in particularly, it may be that we are seeing the emergence of a backlash to some of these minority religious assertions. This is particularly important to Chassidic Jews in Quebec, for example, who have been somewhat assertive in the past two years in arguing for minority religious rights.

We do not really know whether these minority religious assertions will become acceptable over the long run in a society that, on one hand, respects religious minorities, but on the other hand, is essentially secular in nature. Religious minorities are winning the day now and reasonable accommodation has become the acceptable norm.

But will this continue to prevail? The Alberta Court of Appeal decision in the *Hutterite Brethren* case attracted considerable national attention in the media, including critical editorial reaction. This decision had a strong dissenting opinion at the Court of Appeal level. And, as the *Globe and Mail* subsequently asserted in an editorial: "... it's a balancing act. If the majority [of the judges of that Court] had been willing to give more weight to Alberta's obligation to the public to protect driver's licenses from abuse, the Hutterite Brethren, not the system safeguarding those licenses, would have had to make the greater accommodation". At this point, one can only speculate as to whether Canadian society will actively continue to support the accommodation of minority religious rights.

## Science and religion

Over the years, the confluence of science and religion has given rise to a number of issues, including, for example, the related matters of stem cell research and human cloning. This has occurred both in Canada and, more dramatically, in the United States, particularly in relation to government funding of research projects. In fact, each time the U.S. Congress enacts new stem cell legislation aimed at relaxing funding prohibitions, it is vetoed by the President.

Much has been written on the topic of science and religion. In their article entitled "The Regulation of Science and the *Charter of Rights*: Would a Ban on Non-reproductive Human Cloning Unjustifiably Violate Freedom of Expression"[12], authors Barbara Billingsly and Timothy Caulfield argue that the ban on non-reproductive human cloning as contained in Bill C-13 is a violation of section 2(b), freedom of expression, of the *Canadian Charter*. They argue that the legislative purpose underlying the ban was overly broad and,

as such, could not be justified under section 1 of the *Charter*. In another article , authors[13] Jocelyn Downie, Jennifer Llewellyn and Françoise Baylis, also argue that, with respect to the ban on non-reproductive human cloning, scientific experimentation does not constitute an expressive act as contemplated in the test set out in the *Irwin Toy* case. But, even if it does constitute expressive conduct under section 2(b) of the *Charter*, it can be demonstrably justified under section 1 of the *Charter*.[14]

These 'cutting edge' issues are relatively new matters. However, despite the advances of modern science, one striking theme that continues to emerge is the revisitation of the somewhat older issue of evolution versus creationism. This issue has been revitalized in recent years, particularly in the United States, under the rubric of so-called 'intelligent design'.

Intelligent design is a re-branding of the notion of creationism and is no more than a pretense for denying evolutionary science. Intelligent design argues that the world, in its creation and through all of its changes and transformations over the millennia, was pre-ordained and guided by a monotheistic creator and that the developments over time cannot be traced to pure scientific theory. There is no allowance for random changes or the process of natural selection that often occur in nature. In subscribing to the notion that creation was effected solely through an act of a transcendent intelligent agent, intelligent design rejects the knowledge of evolution that we have gleaned from scientific investigation and discovery.

This issue of creationism has come to the fore with much public attention in both Canada and the United States as a result of the opening of two creationism museums. In the United States, proponents of creationism established a substantial $27-million (US) Creation Museum in Petersburg, Kentucky. According to a major article in the *Financial Post,* June 2, 2007, the Creation Museum "features a 'walk through history' based on the '7 Cs of History'". One of these 7 Cs is creation.

Canada has a similar institution. In Big Valley, Alberta, creationism proponent Harry Nibourg opened the Big Valley Creation Science Museum on June 5, 2007. Among its various assertions, the Museum attempts to refute evolutionary science and displays many illustrations supporting creationism. In fact, the Museum suggests that people walked on this planet at the same time as dinosaurs roamed the earth.[15] Both the American and Canadian museums focus on the century-old debate of Darwinism versus creationism and revitalize what many would have thought to be a now somewhat dated argument, long discredited by science.

The year 2005 marked the 80th anniversary of the so-called 'Monkey Trial', the now classic case of *Tennessee v. John Scopes.* In that American case, Scopes was charged with violating a Tennessee statute prohibiting the teaching of the theory of evolution in the state's schools.

More recently, a similar battle took place in a court in Harrisburg, Pennsylvania. Some parents challenged an October 2004 Dover Area School District resolution compelling teachers to read to their classes a statement in respect of the notion of 'intelligent design' prior to engaging in any instruction concerning evolution. One member of the school board argued that creationism should prevail in the schools since the United States "was founded on Christianity and our students should be taught as such".

The debate is often focused on whether discussions about creationism versus evolution belong in religion classes, or as part of the science curriculum in publicly funded schools. Arguably, to make the debate an integral part of a formal science curriculum would bring the advances of science into disrepute and would elevate a particular religious ideology to state-sanctioned teaching. To do so is neither a religious nor a scientific statement. It is simply politics.

On one hand, it is somewhat disturbing that after all these years and after all of the advances of evolutionary science, we are still engaged in a debate on the merits of evolutionary theory versus creationism. On the other hand, given the modern re-emergence of fundamentalist Christian thinking and its attendant political manifestations in North America, it is not surprising that the issue is again front and centre.

Much has been written in support of both sides of this issue. However, readers wishing to engage in this debate, particularly with respect to its political fallout, should refer to the well-documented, academically sound treatise, *Creationism's Trojan Hours: The Wedge of Intelligent Design* by Barbara Forrest and Paul R. Gross. The authors' main point is the political nature of the controversy – the debate about intelligent design is yet another example of the far-reaching influence of religion in modern politics and policy-making. However, unlike many eastern nations, in the U.S.

context, this flies in the face of the constitutional separation of church and state. For many, it is particularly disturbing when faith trumps proven science at the expense of a realistic, scientific understanding of the human condition today.

The whole modern debate underscores the dominance of faith-based politics in the contemporary landscape of North American (and particularly U.S.) public affairs. The interface of politics and religion continues to influence the making of policy. Even today, there remains a certain societal intolerance to the fact that one of the U.S. presidential candidates is a Mormon (Mitt Romney) in the same way that in 1960 there was a reaction to the fact that one of the candidates for president was a Roman Catholic (John Kennedy). Recently, also part of the 2008 U.S. presidential campaign, CNN broadcast a candidates' forum entitled "Faith, Values and Politics" held at George Washington University on June 4, 2007.

When arguing the *Scopes* trial, it is doubtful that lawyers Clarence Darrow and William Jennings Bryan would have imagined that, almost a century later, the debate over evolution would still attract the prominent attention that it does.

## Canada's religious demography in 2017

The final issue to be addressed in this survey is the Statistics Canada population projections for the year 2017 as they relate to Canada's religious demographics. These projections are neither particularly dramatic nor startling, nor are they really surprising. They do, however, point to three predictable conclusions. First, the number of persons in certain religious minorities will increase substantially. This is essentially a result of immigration patterns already begun and projected into the future. For example, there will be an increasingly greater number of Muslims, Sikhs. Hindus and Buddhists in the year 2017. Secondly, for some religious minorities, there will be a decline in their relative numbers. For example, since there are very few Jewish immigrants to Canada, the proportion of those in Canada's Jewish minority will decline compared to other religious minorities. Thirdly, also because of immigration patterns already in place and likely to continue into the future , those in the Christian majority in Canada will still constitute a significant number but will do so in an increasingly smaller proportion when compared to the entire Canadian population. And, most of the foregoing will largely occur in the large urban centres throughout Canada.

What then is the significance of these population projections? First, there will likely be an increase by emboldened minorities of minority religious assertions in the courts, again most likely under the freedom of religion and perhaps the equality clauses in the *Canadian Charter of Rights and Freedoms.* In an attempt to avoid excessive litigation, this will likely lead to a prophylactic response in the nature of greater instances of reasonable accommodation or some other similar mechanism to adjust societal norms to the sensitivities, needs and requisites of religious minorities. At the same time, there might be a further backlash or response by the majority to these various assertions of minority religious concerns. This backlash, similar to the recent Herouxville phenomenon, will likely emerge from time to time as a result of frustration, perhaps some intolerance or simply a sense of fatigue experienced by the majority. Responses to new technological advances, akin to the current issues of stem cell research and cloning, as well as a return to some of the older issues such as creationism, will continue to see the light of day as a result of impassioned assertions by some members of the evangelical sector of the Christian majority.

Many of the foregoing issues have largely occurred contemporaneously with the quarter century anniversary of the *Canadian Charter of Rights and Freedoms.* When we mark subsequent anniversaries of the *Charter*, we will likely see that God is not dead, as *Time* magazine speculated some forty years ago, but rather, God is alive and well and will continue to occupy a central role in Canadian life.

## References


1 *Adler v. Ontario,* [1969] S.C.R. 609.

2 *C.C.L.A. v. Ontario Minister of Education (Elgin County),* [1990] D.L.R. (4th) 1.

3 *Zylberberg v. Sudbery Board of Education (Director),* [1988], 65 O.R. (3d) 641 (Ont. C.A.

4 *Multani v. Commission scolaire Marguerite-Bourgeoys,* [2006] 1 S.C.R. 256.

5 *B.(.R) v. Children's Aid Society of Metropolitan Toronto,* [1995] 1 S.C.R. 315.

6 *R. v. Jones,* [1986] 2 S.C.R. 284.

7 *Trinity Western University v. College of Teachers,* [2001] 1 S.C.R. 772.

8 See the Globe & Mail and National Post, June 7, 2007.

[9] *Walter v. Attorney General of Alberta, [1969] S.C.R. 383.*

[10] *Hutterite Brethren of Wilson Colony [2007] A.J. No. 518.*

[11] See Gerald Gall, "Religion and Multiculturalism", *Canadian Diversity/Diversité Canadienne,* vol 5:2 Spring 2006 Printemps, p. 69.

[12] (2004), 29 Queen's L.J. 647.

[13] "A Constitutional Defence of the Federal Ban on Human Cloning for Research Purposes", (2005), 31 Queen's L.J. 353.

[14] See also Colin Rasmussen, "Canada's *Assisted Human Reproduction Act:* Is It Scientific Censorship, or a Reasoned Approach to the Regulation of Rapidly Emerging Reproductive Technologies?", (2004), 67 Sask. L.Rev. 97. In this article, the author explores the *Assisted Human Reproduction Act* and its ban on human cloning for reproductive or therapeutic purposes and its attendant restriction of research utilizing human reproductive materials. In his analysis, the author concludes that the *Act* is overly broad and, as a result, it unreasonably impairs the capacity of Canadian scientists to conduct work in areas such as cutting-edge stem cell research. For an examination of proposals for law reform in this area, see Duff Waring and Trudo Lemmens, "Integrating Values in Risk Analysis of Biomedical Research: The Case for Regulatory and Law Reform", (2004), 54 U.T.L.J. 249. In the area of patentability of higher life forms, see, the Supreme Court of Canada decision in *Harvard College v. Canada (Commissioner of Patents),* [2002] 4 S.C.R. 45. Finally, see Abdallah Daar and Lorraine Sheremeta, "The Science of Stem Cells: Some Implications for Law and Policy", (2002) Health L. Rev. 11.1.

[15] See *The Globe & Mail,* June 6, 2007.