

The State of Religious Freedom in Canada

Janet Epp Buckingham

Trinity Western University

We have an astonishing array of religions in Canada according to the recently released census results from 2011.

This means that we have both individuals and organizations with deep religious convictions, manifestations, practices and needs. These religious individuals and organizations make enormous contributions to Canadian society and internationally. The representative of the Holy See at the United Nations recently detailed the schools, hospitals, shelters, orphanages and care homes provided by the Catholic Church alone and it provides far more than any single state. And that is just one denomination of one religion. In Canada, religious institutions provide addiction services, shelters, food banks, care for elderly, hospices, care for those with disabilities (both mental and physical), schools, universities, international development agencies, care for refugees and medical care. They also provide rites of passage such as marriage, welcoming babies and funerals. There are programs for every age and most needs.

Yet religions often have particular requirements. They have holy days, special dress requirements, special educational requirements, and dietary restrictions. Some of these are fairly easy to accommodate in most circumstances but require a bit of thought and planning. Hindus are usually vegetarian. Jews and Muslims don't eat pork. These are fairly easy to accommodate. And in Canada, they usually are.

Canada has strong legal protection for religious freedom. We have a bill of rights, named The Charter of Rights and Freedoms, which protects

both “freedom of conscience and religion” and equality without discrimination on the basis of, inter alia, religion. Thus, we have constitutional protection for religious freedom. The Charter applies to government, however, and does not address religious discrimination between individuals. There is also legislation, called human rights codes, in most places in Canada that prohibits discrimination in employment, housing and provision of services on the basis of enumerated grounds, among which is religion.

Canada is a federal country, with 10 provinces. One of these, Quebec, has spent much of the last 10 years having a public dialogue about what is termed “reasonable accommodation.” After several high profile situations of minorities asking to be accommodated, the Quebec government appointed a commission in 2007 to hold hearings and issue a report on the issue of “reasonable accommodation.” There was concern that the foundations of collective life were being undermined. The inflammatory issues included an Orthodox Jewish school which had asked the neighboring sports facility to frost the glass in their exercise rooms so that the schoolboys were not exposed to women in scanty exercise clothing. A Muslim group asked a breakfast restaurant to provide a Muslim group with pork-free Halal sausage, which they would bring themselves, rather than the regular pork sausage, but the perception was that there was a “demand” to alter the menu for all customers. The Bouchard-Taylor Commission reported in 2008 that the so-called issues were over dramatized by the media and all had been resolved. They recommended dialogue and accommodation.

Instead, the current Quebec government built on the fears for the francophone culture of Quebec and campaigned in 2012 on the basis that they would establish a “secular charter” to protect society against

incursions on the dominant culture. In August this year, they released their proposals to ban the wearing of religious symbols for any government workers and for anyone receiving government services. Both education and health care are government services in Canada and even daycare for small children is a government service in Quebec. This bans the wearing of the kippa for Jews, of the hijab for Muslim women and the turban and kirpan for Sikh men.

It seems that Quebec has looked to France and Switzerland for advice on how to deal with minorities.

This proposal has stimulated debate across Canada on respect for religious minorities. While many public figures have opposed the Quebec charter, many letters to the editor and commentaries have argued that this is a good way forward to minimize conflict in society.

Canada is largely a country of immigrants. The federal government has welcomed immigrants from around the world throughout Canada's history. It would not minimize conflict to force religious adherents to hide their identity.

Many of these conflicts have ended up in court. Let me speak to some recent examples. A Muslim woman, who alleges that two of her male relatives sexually assaulted her, is fighting to be able to testify in court wearing her face scarf. As she puts it, "why should I have to take off my clothes in order to testify?" This case went to the Supreme Court of Canada in 2012, which did not decide the issue but gave guidelines to the trial judge. When it was reheard at the trial level, the same judge made the same decision he had the first time, the woman must remove her niqab to testify.

Let's move to talk about religious groups that are related to Christianity. Hutterian Brethren live communally on farms, called colonies. They are pacifists and educate their own children. They have been marginalized in a variety of ways for decades. Most recently, one colony objected to having mandatory photos for drivers' licenses. The province of Alberta used to have an exemption but removed it. A legal challenge to the Supreme Court of Canada it was denied in in 2009 on the basis that the security of the drivers' license system is more important than this religious concern.

Religious institutions have also faced considerable pressure to be more open. Remember that human rights codes prohibit discrimination on the basis of religion. Most human rights codes exempt religious institutions from this provision so that religious charities can hire employees from that religion. This is being restricted, however. A Christian charity that provides residential care for mentally disabled adults has been required to open employment to anyone, regardless of religion. This charity is justifiably worried that it will lose its Christian identity if it cannot hire people who share Christian convictions.

My university, Trinity Western University, has submitted a proposal for a new law school at the university. Trinity Western currently has professional programs in education, business and nursing. It has been the center of much controversy as the university's community covenant defines marriage as being between a man and a woman. Opponents have argued that a university that espouses this religious view of marriage is discriminatory and not an appropriate educational environment for law students. Remember that Canada changed the definition of marriage in 2005 to include same-sex couples. However, the legislation that changed the definition of marriage also stated that

religious charities would not be negatively affected if they retained a religious definition of marriage. The university has fought this battle in the courts before. It was initially denied accreditation for its education program and had to bring a legal challenge all the way to the Supreme Court of Canada. The court ruled in 2001 that a private, religious university can enforce Christian principles within the university without it being contrary to the public interest.

Two cases involving education and a course in “ethics and religious culture” have wound their way through the Quebec courts. The first has been decided by the Supreme Court of Canada and in public schools, children cannot be exempted from the course even if it conflicts with their religious upbringing. The second is being brought by a private, Roman Catholic high school that argues that it has its own religion courses and should not be forced to also offer one developed for public schools. This has yet to be heard by the Supreme Court of Canada but the Quebec Court of Appeal ruled against the school. The Court of Appeal has allowed the state to dictate religious curriculum to a private religious school.

While we have mechanisms for dealing with religious freedom in Canada, we cannot take for granted that it will be protected in a broad and holistic fashion. There is constant pressure for religious adherents to fit into “Canadian values” which includes secularism. Religion is manifested in many ways, including outreach and witness and including a wide variety of lifestyle issues. Religious freedom is a core value in Canadian society yet recent court cases and government initiatives suggest that it is being restricted.