
QUEBEC CHARTER CHALLENGES FREEDOM OF RELIGION

*By Jennifer M. Leddy**

A. BAN ON “CONSPICUOUS RELIGIOUS SYMBOLS”

The proposed Quebec Charter of Values is being hotly discussed in media across the country because it is a breathtaking attack on the freedom of religion that is guaranteed in the Canadian *Charter of Rights and Freedoms* and protected under most provincial human rights codes. The Québec Government has released its proposals in advance of introducing them in the National Assembly to obtain feedback from the public. According to the Québec Government, the overarching purpose of the Charter of Values is to establish the neutrality of the state and to create clear rules on religious accommodation of public employees, thereby contributing to “integration and social cohesion.”

The proposal that has caused the most controversy and division is the one that prohibits the wearing of “conspicuous religious symbols” by government employees while at work. This would include public servants, state personnel with the power to impose sanctions (e.g. judges, police officers, prosecutors, and correctional officers), teachers, daycare personnel, health care workers and municipal staff. However, colleges, universities, public health and social service institutions and municipalities can adopt a resolution allowing its personnel to wear such religious symbols. The authorization would be good for up to five years and renewable.

Examples of the types of religious symbols that would be forbidden would be the Muslim hijab and face veil, the Jewish yarmulke, the Sikh turban and large crucifixes. Small symbols such as a ring with the Star of

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David, earrings with the Muslim crescent or a small crucifix would be permitted. Notwithstanding the purported goal of establishing state neutrality, the proposed Charter of Values would not require removal of the religious symbols that are considered “emblematic of Quebec’s cultural heritage”, such as the cross in the Quebec legislature and on top of the town of Mount Royal. Nor would towns with the names of saints be required to change their names.

B. COLLISION COURSE WITH CANADIAN CHARTER

If the Charter of Values is passed by the Quebec National Assembly, it is on a collision course with the Canadian Charter and the body of case law of the Supreme Court of Canada which has taken a “broad and expansive” approach to freedom of religion, protecting both religious beliefs and conduct flowing from those beliefs, as well as, obligatory and voluntary expressions of faith.

The leading case on freedom of religion is *R.v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295 which was decided by the Supreme Court of Canada almost thirty years ago. It held that “*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 reprisal, and the right to manifest religious belief by practice or by teaching and dissemination.*” The case of *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 SCR 256 is very pertinent in the current circumstances. In that case the Supreme Court of Canada decided that the decision of the Montreal school board’s council of commissioners that an orthodox Sikh would have to wear a symbolic kirpan (e.g. a pendant) or a wooden or plastic kirpan to school instead of a real kirpan for safety issues infringed his freedom of religion because he sincerely believed that he would not be complying with the requirements of his religion if he did not wear the real kirpan, which he would have been willing to wear sealed and sewn inside his clothing. It was found that the interference with his religion was not insignificant because it deprived him of his right to attend a public school. On the other hand, there may be support from the Supreme Court for the proposal in the Charter of Values which will make it mandatory to have one’s face uncovered when providing or receiving a state service. In 2009 the Supreme Court found that a Hutterite community in Alberta was obliged to have a photo on their drivers’ licences like other Albertans even though they objected to having their photos taken on religious grounds -*Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 SCR 567.

C. POTENTIAL LEGAL ARGUMENTS

The legal arguments that can be mounted against the Charter of Values are many and will probably include the position that it results in unequal treatment of those espousing different religions because not all religions require the wearing of a particular symbol or form of dress and that it forces a person to choose between his or her religion and a government job. It can also be argued that the means of achieving the purported purpose of state neutrality are not rationally connected to that purpose because one cannot assume that a person who does not belong to a religion does not adhere to a set of beliefs or values. It is also equally unfounded to assume that because a person adheres to a religion that that person is incapable of fulfilling his or her job duties in an impartial manner.

D. THE WAY AHEAD

Religious charities will want to follow the debate closely if they have adherents who may be subject to the proposed Charter of Values or for any fall-out in their own provinces. In this regard, they can take some comfort from the following resolution that was unanimously passed by the Ontario Legislative Assembly on September 19, 2013 *“that, in the opinion of this House, the government of Ontario should oppose any legislation that would restrict or prohibit people’s freedom of expression and religion in public places and affirm that Ontario greatly values our diverse population and the social, cultural and economic contributions they make to help our society thrive.”*



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